APPENDIX 1

[¶ 9936] Lorenzo Hayes et al., Plaintiffs v. Seaboard Coast Line Railroad Company et al., Defendants.

United States District Court, Southern District of Georgia, Savannah Division. Civil No. 2371. December 9, 1968.

Title VII—Civil Rights Act of 1964

Employment Discrimination Suit—EEOC Conciliation Efforts as Prerequisite to Suit—Adjudication Under Railway Labor Act as Prerequisite to Suit—In a suit alleging that a railroad engaged in racial discrimination against certain Negro employees, the court reserved judgment, pending determinations in other court cases, on the question of whether efforts at conciliation by the Equal Employment Opportunity Commission were a prerequisite to the right to maintain a suit. The court also reserved judgment as to whether exhaustion of remedies under the Railway Labor Act was a prerequisite to a suit for racial discrimination under Title VII of the 1964 Civil Rights Act.

Employment Discrimination Suit—Back Pay—Right to Jury Trial.—A railroad was not entitled to a jury trial to determine whether or not back pay should be awarded to Negro employees alleging racial discrimination on the part of the railroad. A contention that proper procedure would require a jury trial for the back pay phase of the case and a bench trial with respect to the discrimination issue was rejected on the grounds that such proceedings would thwart the will of Congress and frustrate the purposes of the legislation. It is for the court to determine the issue of discrimination and to award back pay if appropriate.

Employment Discrimination Suit—Back Pay—Propriety of Award to Members of Class Who Filed No Grievance

with EEOC.—In an employment discrimination suit, the court reserved judgment, pending rulings in other court cases, with respect to the issue of whether individual members of a class of complainants who had not filed individual grievances with the EEOC were entitled to back pay.

Employment Discrimination Suit—Timeliness of Suit—Interrogatories.—A motion by a railroad to dismiss a suit for employment discrimination on the ground that the suit was not timely filed in accordance with statutory requirements was dismissed where evidence indicated that the suit was timely filed. A motion to require the railroad to answer certain interrogatories before the complaining parties answered the railroad's interrogatories was denied.

Bobby L. Hill, E. H. Gadsden, Savannah, Georgia and Jack Greenberg, New York, New York, for Plaintiff.

Malcolm Maclean and Adams, Adams, Brennan & Gardner, Savannah, Georgia, for Defendant.

[*Issues*]

LAWRENCE, D. J.: Counsel for plaintiffs and the employer have filed helpful briefs. They are in sharp dispute on several fronts through the four main theatres of conflict appear to be:

1. Is "a real endeavor" at mediation on the part of the Equal Employment Opportunities Commission a condition precedent to the institution of a suit against an employer charged with racial discrimination?

2. Does the controversy over the alleged maintenance of a racially segregated and dual system of jobs and lines of progression belong before the National Mediation Board rather than the District Court?

3. Is defendant the Railroad entitled to a jury trial on the issue of back pay to plaintiffs (and the class they represent) in the amount that would have been earned in absence of racial discrimination?

4. Is back pay awardable to members of a class who filed no individual grievance with the EEOC?

I. *Does this Court lack jurisdiction because EEOC made no effort to mediate plaintiffs' claim of discrimination?*

If the Congress had made a deliberate effort at ambiguity in lawmaking, it could hardly have succeeded better than in the instance of 42 U.S.C., § 2000e-5(a). The controversy in this Court is but an extension of the dichotomy of viewpoint in Congress on whether an attempt by the Commission to secure voluntary compliance by an employer must precede litigation by the discriminatee. The courts have been just as sharply divided as Senators Javits and Ervin on this issue.* Cases which hold that Commission action is indispensable to jurisdiction include *Dent* v. *St. Louis—San Francisco Railway Co.*, [55 LC ¶ 9047] 265 F.Supp. 56; *Mickel* v. *South Carolina State Employment Service*, (4th Cir.), [55 LC ¶ 9057] 377 F.2d 239 (and subsequently 57 LC ¶ 9111).

On the other hand and directly to the contrary there are *Choate* v. *Caterpillar Tractor Company* [58 LC ¶ 9162] (7th Cir.) No. 16700, October 17, 1968; *Johnson* v. *Seaboard Coast Line Railroad* (4th Cir.) [59 LC ¶ 9177] No. 12154, October 29, 1968; *Mondy* v. *Crown Zellerbach*,

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* Senator Ervin: ". . . the aggrieved party cannot sue in the Federal Courts unless the commission . . . fails to adjust the matter by conciliation."

Senator Javits: ". . . that [conciliation] is not a condition precedent to the action of taking a defendant into court." Quoted from *Johnson* v. *Seaboard Coast Line Railroad*, [59 LC ¶ 9177] 4th Cir., October 29, 1968.

[56 LC ¶ 9082] 271 F.Supp. 258 (E.D. La. 1967); *Moody* v. *Albemarle Paper Co.*, [56 LC ¶ 9070] 271 F.Supp. 27 (E.D. N.C. 1967); *Evenson* v. *Northwest Airlines, Inc.*, [55 LC ¶ 9053] 268 F.Supp. 29 (E.D. Va. 1967); *Quarles* v. *Philip Morris, Inc.*, [55 LC ¶ 9054] 271 F.Supp. 842 (E.D. Va. 1967); *Pena* v. *Hunt Tool Company*, 58 LC ¶ 9123 (S.C. Tex. 1968); *Wheeler* v. *Bohn Aluminum and Brass Company*, [58 LC ¶ 9137] 68 LRRM 2769 (W.D. Mich. 1968).

I am tempted to follow the majority viewpoint on this issue. However, since counsel advise me that the *Dent* case is now before the Fifth Circuit where it was argued some time ago I will reserve judgment until a decision in that case is handed down.

II. *Is the controversy here one that must be adjudicated under the Railroad Labor Act rather than in this Court?*

Contending that it is, counsel for the Railroad lean heavily on *Norman* v. *Missouri Pacific Railroad*, 58 LC ¶ 9144. It was held in that case that a District Court is without jurisdiction to require all Negro employees in the train porter craft to be placed in the class of brakemen. In so holding the District Judge cited *Howard* v. *St. Louis—San Francisco Railway Co.*, [53 LC ¶ 9021] 361 F.2d 905 where it was said that only the Mediation Board is empowered to make craft determinations.

Plaintiffs' counsel assert that *Norman* "stands alone in requiring exhaustion of non-Title VII avenues before resort to relief under Title VII can be pursued". They cite *Dent* v. *St. Louis—San Francisco Railway*, *supra*, where it held that a collective bargaining effort before the Railroad Adjustment Board is not a prerequisite to suit by aggrieved employees under Title VII.

The Court here is not asked to reclassify crafts in the railroad industry but to rectify racial discrimination against Negroes *as individuals* within a craft. My inclination is to follow *Dent*. However, I will reserve decision for a reasonable time pending disposition of the appeal in *Dent*. Certainly a decision should be forthcoming shortly.

III. *The Motion to Strike Defendant's Demand for a Jury Trial on Issue of Back Pay*

In its answer SCL prays for a jury trial on the issue of back pay. Plaintiff moved to strike the demand and to have the case placed on the non-jury calendar.

The Railroad argues that *Beacon Theatres*, 359 U.S. 500, and *Dairy Queen* 369 U.S. 465 require a jury trial on the issue of plaintiffs' prayer for back pay. It contends that where legal and equitable causes conjoin the legal issues are determinable by a jury and the presence of the equitable feature does not deprive a party of the right thereto. Citing *Harkless* v. *Sweeny Independent School District*, [57 LC ¶ 9121] 278 F.Supp. 632 (S.D. Tex., 1968), in which back pay was asked by Negro school teachers seeking reinstatement, they assert confidently the right to jury trial in the present case.

On their part, plaintiffs say that to warrant a jury trial the claim must be of such a nature as would entitle a party to a jury at the time of the adoption of the Seventh Amendment. *United States* v. *Louisiana*, 339 U.S. 699, 706; *NLRB* v. *Jones & Laughlin Steel Corp.* [1 LC ¶ 17,017] 301 U.S. 1; *Wirtz* v. *Jones*, [51 LC ¶ 31,665] 340 F.2d 901. It is their further contention that the complaint involves the equity jurisdiction and powers of the Court and that as such a court may award money damages on an integral part of the decree so that complete relief may be had. *Katchen* v. *Landy*, 382 U.S.

323, 338; *Smith* v. *Hampton Training School for Nurses*, [53 LC ¶ 9019] 360 F.2d 577, 581 (4th Cir.). They point out that the Fifth Circuit Court of Appeals has stated that *Beacon Theatres*, *Dairy Queen* and *Thermo-Stitch* (294 F.2d 486) do not "convert *any* money request" in injunction cases "into a money claim triable by jury". See *Swofford* v. *B. & W., Inc.*, 336 F.2d 406, 414.

The effect of the Seventh Amendment on Title VII of the Civil Rights Act of 1964 (42 § 2000e-5(g)) has produced the usual clash of conflicting philosophies concerning interpretation.

SCL contends that the gist of the action is the relief sought by plaintiffs in the way of back pay in the form of money damages and that injunctive relief is merely incidental to this legal, jury-triable issue. I disagree.

This case comes into this Court under Title VII and the gravamen of the complaint is injunctive and declaratory relief against racial discrimination in employment affecting plaintiffs and the class. Back pay is one of the modes of relief that a court can grant.

Certainly this appears to be the understanding of Congress as reflected by 42 § 2000e-5(g). The language of that section is:

> "If the Court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the Court may enjoin the respondent from engaging in such unlawful employment practice and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice)."

Defendant maintained on oral argument that the proper procedure in this case would be to try the back pay or money judgment phase before a jury and then for the Court to proceed to decide whether racial discrimination exists in employment practices and whether defendant should be enjoined. To give such direction to Title VII cases would, in my view, thwart the will of Congress and to an extent frustrate the purposes of the legislation. Further and alternatively, it is hard to conceive of a more chaotic method of district court handling of an EEO case than for the judge to hold a non-jury trial, as he must, on the racial discrimination charges under the injunctive and declaratory relief features and thereafter refer to a jury the issue of back pay after a repetition of the same evidence.

The duty of the Court to enjoin discrimination where it finds unlawful employment practices to exist is unraveably intertwined with the resulting money loss to a particular employee. Unequal opportunity in job classifications and in promotions, the establishment of new seniority list, dealing with historically segregated departments, the equalization of pay in separate job classifications but comparable work—in all of this a jury is at best ill-equipped to make determinations of so sophisticated issues involving so complicated computations.

What plaintiffs contend concerning jury trials under Title VII seems to be the view of most of the courts confronted with jury demands in back pay issues. Cases in which jury trial was denied include *Anthony* v. *Brooks*, 67 LRRM 2897 [56 LC ¶ 9090] (N.D. Ga., Sept. 18, 1967); *Banks* v. *Local 136*, C.A. 68-598 (N.D. Ala., January 29, 1967) and *Lea* v. *Cone Mills*, C.A. C-176-D-66 (M.D. N.C., March 25, 1968).*

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* *Quarles* v. *Philip Morris*, [57 LC ¶ 9101] 279 F.Supp. 505 (E.D. Va., 1968) gives some idea of the complicated task that would confront a jury in ascertaining right to back pay and the amount thereof.

If these decisions and 42-2000 e-5(g) of Title VII do not give due deference to the Seventh Amendment's preservation of the right of jury trial "in Suits at common law", higher courts will soon begin to inform me. I am of the opinion that denial thereof does not contravene the Constitution and therefore strike the demand. *Jones & Laughlin, supra,* and *Mitchell* v. *DeMario Jewelry, Inc.,* [39 LC ¶ 66,108] 361 U.S. 288 seem to tell me that I am not wrong in doing so.

IV. *Is back pay awardable to members of a class who filed no individual grievance with the EEOC?*

SCL has moved to strike the plaintiffs' prayer for back pay as it relates to members of the class on the ground that no complaint by them was made to EEOC and that, absent grievance procedures under Title VII, money awards cannot be made in this Court.

Here, again, we have conflicting interpretations. *Bowe* v. *Colgate-Palmolive Co.,* [56 LC ¶ 9069] 272 F.Supp. 332 (N.D. Ill., 1968) indicates that without filing a grievance with EEOC there can be no back pay recovery. In *Quarles* v. *Philip Morris, Inc., supra,* pay adjustment was allowed to a member of the class who had neither filed a charge with the Commission or intervened in the District Court action.

Judicial determination of the meaning of Title VII in this as well as in other areas is in flux. There is no necessity of meeting the issue at this time. While I have an inherent distaste for awarding sums of money to anonymous plaintiffs I will not at this stage translate predilection into decision but will reserve judgment in the hope that before the discovery procedures in this case are completed there will be a more compelling body of decisional law on the subject. *Jenkins* and *Oatis* are not determinative of the particular issue. It will be

helpful if counsel will keep me informed of developments in the particular area of law.

V. I will consider now some of the grounds of controversy by SCL's motions to dismiss. Grounds 8-11 involve the issue of timeliness under Title VII. According to a statement of counsel for plaintiffs at the oral argument, the action was brought within 30 days after receipt of written notice by the Commission of failure to obtain voluntary compliance. I assume that this announcement satisfies the Railroad. Accordingly, I overrule the motion to dismiss as to that ground.

Related motions are based on the claim of plaintiffs' non-compliance with the requirements that the discrimination charge must be filed within 90 days of the practice complained of, the complaint filed within 180 days after such practice and more than 60 days after the filing of the charges with EEOC. The several motions addressed to such defects are overruled. Except in the case of the 30-day requirement, the time provisions under Title VII are generally held by the courts to be directory rather than mandatory. See *Dent* v. *St. Louis, supra; Choate* v. *Caterpillar Tractor Company, supra; Pullen* v. *Otis Elevator Company,* 58 LC ¶ 9133 (N.D. Ga., 1968); *Harris* v. *Orkin Exterminating Inc.,* 58 LC ¶ 9134 (N.D. Ga., 1968); *Kendricks* v. *American Bakery Co.,* 58 LC ¶ 9146 (N.D. Ga., 1968).

VI. *Class Action Feature*

Under Rule 23 the court is required as soon as practicable to determine whether a class action is maintainable and to specify the class represented and to provide (here, pursuant to Rule 23(b)(3)) for notice to its members. In a statement made during the argument counsel for plaintiffs limit the class to Negro employees of the SCL at Savannah. I specify that the class represented

by plaintiffs will include Negro employees at or near Savannah who belong to or are eligible for membership in either of the two local defendant Brotherhoods by reason of job classification. A form of notice and the manner of giving same will be presented for my consideration by counsel.

VII. *Plaintiffs' Motion to Obtain Discovery Priority*

On September 3, 1968, SCL served interrogatories and on October 21st the defendant unions directed interrogatories to plaintiffs. On November 15th the latter served interrogatories on SCL and at the same time they moved that the defendants be required to answer first although they were served last. The ground of the motion is that plaintiffs' proof will come necessarily from defendants and that information as to segregated job classifications and the unions is exclusively within the knowledge of defendants.

It is perhaps true that much of the information sought in defendants' interrogatories is already known to them. At the same time, a number of the questions (from casual inspection) are answerable by plaintiffs. They should do so on the basis of information readily available. If they are unable to answer *some* of these interrogatories it would raise serious doubt in my mind as to their being entitled to represent the class.

Plaintiffs' motion for priority is denied and they are required to answer defendants' interrogatories to the extent practicable and as soon as practicable.

VIII. *Motion of SCL to Strike Allegation in Paragraph VIII of the Complaint*

The defendant railroad moves to strike the allegation that the union bargaining contracts require it to give preference to sons of employers in the selection of ap-

prentices. An affidavit by an officer of SCL disputes the existence of any such provision in the contracts. I do not think this issue can properly be resolved on motion to strike. I could treat the motion as one for partial summary subject and will do so unless plaintiffs in reasonable time delete the allegation by amendment after satisfying themselves of the non-existence of the disputed contractual provisions.

IX. *Motion to Substitute Seaboard Coast Line Railroad Company for the Two Railroad Defendants Who Have Merged*

This motion as well as the amendment in that connection is allowed.

APPENDIX 2

[¶ 9953] Lorenzo Hayes et al., Plaintiffs v. Seaboard Coast Line Railroad Company et al., Defendants.

United States District Court, Southern District of Georgia, Savannah Division. Civil No. 2371. January 14, 1969.

Title VII—Civil Rights Act of 1964

Employment Discrimination Suit—EEOC Conciliation Efforts as Prerequisite to Suit—Adjudication Under Railway Labor Act as Prerequisite to Suit.—In a suit alleging that a railroad engaged in racial discrimination against certain Negro employees, a "real endeavor" by the Equal Employment Opportunity Commission to conciliate the dispute was not a prerequisite to suit. Moreover, exhaustion of collective bargaining procedures under the Railway Labor Act also was not a prerequisite to the suit.

Employment Discrimination Suit—Class Action—Notice to Members of Class.—A complaining employee properly represented a class of Negro employees of a railroad who belong to or were eligible for membership in a labor union. In addition, notice to all members of the class represented in the suit was required. Such notice would not be futile since the class was identifiable. Moreover, notice was considered by the court to be of value, since the litigation would affect the jobs of the class members.

Issuing order supplementing decision in (DC Ga. 1968) 1 EPD ¶ 9936.

Bobby L. Hill, and E. H. Gadsden, Savannah, Georgia, and Jack Greenberg, New York, New York, for Plaintiffs.

Adams, Adams, Brennan, Jay Gardner and Malcolm Maclean, Savannah, Georgia.

LAWRENCE, D. J.: In the order of this Court dated December 9, 1968 judgment was reserved on the issue of whether "real endeavor" by the Equal Employment Opportunities Commission to mediate the grievance is a jurisdictional prerequisite for Federal Court actions by aggrieved employees under Title VII of the Civil Rights Act of 1964. While I was tempted at the time to follow *Choate* v. *Caterpillar Tractor Company* [58 LC ¶ 9162] (7th Cir.) No. 16700, October 17, 1968 and *Johnson* v. *Seaboard Coast Line Railroad* [59 LC ¶ 9177] (4th Cir.) No. 12154, October 29, 1968, I decided to await the ruling by the Court of Appeals for the Fifth Circuit in the appeal in *James C. Dent and United States Equal Employment Opportunity Commission* v. *St. Louis-San Francisco Railway Company, et al.*, [55 LC ¶ 9047] 265 F.Supp. 56.

That decision has now been handed down. The Court of Appeals for this Circuit says that "a plain reading of the statute does not justify the conclusion that, as a jurisdictional requirement for a civil action by the aggrieved employee under Section 706(e), the Commission must actually attempt and engage in conciliation." See *Dent*, No. 24810 and two similar appeals consolidated with it, decided January 8, 1969.

I now overrule ground 2 of Defendant's Motion to Dismiss.

I also held up my decision in respect to Defendant's Motion to Dismiss on the ground that this Court is without jurisdiction because of non-exhaustion by plaintiffs of administrative remedies under the Railroad Labor Act. I had mistakenly supposed that this issue which was decided adversely to the defendant in *Dent* by the District Judge was involved in the appeal in that case. Under the circumstances, I rule that collective bargaining procedures before the Railroad Adjustment Board are

not a requisite to suit by employees against the railroad under Title VII. Ground 3 of Defendant's Motion to Dismiss is therefore overruled.

Class Action Notice

In the order of this Court dated December 9, 1968, I specified that plaintiffs properly represent a class consisting of all Negro employees of the defendant Railroad at or near Savannah who belong to or are eligible for membership in either of the two local defendant Brotherhoods. I directed counsel for defendants to present a form of notice and a suggested manner of giving same in accordance with Rule 23(b)(3).

Plaintiffs have moved to alter and amend the order so as to designate the class action as one under 23(b)(2). The result would be that no notice to the members would be required.*

At the time I ruled in respect to the class that the plaintiffs represent in this case I was aware that the action was brought pursuant to Rule 23(b)(2). I was also aware that the existence of questions of law or fact common to the members is alleged and that the prayers of the complaint include one for grant of back pay to the class.

I agree with the statement in the able memorandum filed on behalf of plaintiffs on this question that the allegations "abundantly meet all of the requirements of Rule 23(b)(2)." According to the Advisory Committee report, the reach of that sub-paragraph is illustrated by actions in the Civil Rights field when a defendant is charged with discrimination against a class whose mem-

* However, under Rule 23 the court may in *any* appropriate instance enter orders requiring notice to members of the class so that they may signify whether they consider the representation adequate and, if desired, intervene in the action. See 23(d)(2).

bers are not easily capable of specific enumeration. See *Jenkins* v. *United Gas Corporation*, [58 LC ¶ 9154] 400 F.2d 28, 34. Here, the members of the specified class are not only capable of identification but are relatively small in number. I do not think (b)(2) is intended to apply where the existence of racial discrimination may require varying solutions by the court under different factual situations as to employees. Final relief herein, for all I know, may predominantly involve the issue of money damages. In such cases (b)(2) non-notice is inappropriate. At least, that is the way I read the Advisory Committee notes as to amended Rule 23.

I gathered at the oral argument that one of the chief complaints of plaintiffs concerning requirement of notice to the class specified is that it would be an exercise in futility. I disagree. I think notice to members of an identifiable, unnumerous class may be salutary and of value. I do not foresee any possible harm or hurt flowing from notice. I cannot understand the apparent reluctance of plaintiffs to let non-party employees know that litigation which may affect their jobs, including higher pay and promotion, is in progress. A disclosed rather than a secretive agency is preferable in such cases.

I therefore adhere to my original order specifying the class representation and providing for notice to members. In an area of law so shifting and unstable courts must feel their way. My order is, of course, alterable at any time prior to decision on the merits under Rule 23(c)(1).

In the alternative, plaintiffs have moved, pursuant to Title 28, § 1292(b), for certification for the purpose of an interlocutory appeal on this issue. In such a case the Court must find that an immediate appeal may materially advance the ultimate termination of the litigation. Being of the definite view that an interlocutory appeal upon

the matter of (b)(3) notice to the class would have an opposite effect plaintiffs' motion for certification of the issue is denied.

Similarly, the motion by Seaboard Coast Line to certify the jury question for immediate interlocutory appeal is denied. I am confident that by the time we get down to a hearing on the merits in this case the jury issue feature under Title VII will have been authoritatively dealt with on higher levels.

APPENDIX 3

[¶ 8170] Lorenzo Hayes et al., Plaintiffs v. Seaboard Coast Line Railroad Company et al., Defendants.

United States District Court, Southern District Georgia, Savannah Division. Civil No. 2371. April 9, 1971.

Railway Labor Act—Racial Discrimination

Seniority Rights—Parties to Suit—Union Representation—Class of Employees Affected.—An action brought by certain Negro employees against their employer and their bargaining representative claiming racial discrimination in employment opportunities is stayed to permit the joinder, as indispensable parties, of those white employees whose seniority rights would be affected by the relief sought and whose interests could not fairly and adequately be represented by the bargaining representative which had an equal duty to represent the complaining employees.

Denying motion to dismiss for failure to join indispensable parties (DC Ga. 1968) 1 EPD ¶ 9936, 59 LC ¶ 9179, which was supplemented by order in (DC Ga. 1969) 1 EPD ¶ 9953, 59 LC ¶ 9196, 46 F.R.D. 49.

Bobby L. Hill, Savannah, Georgia, for Plaintiffs.

Malcom Maclean, Connerat, Dunn, Hunter, Houlihan, Maclean & Exley, P. C., Savannah, Georgia, for Defendant Seaboard Coast Line Railroad Company.

Pratt Adams, Savannah, Georgia, for Defendant Railway and Steamship Clerks, Locals 1338 and 1587.

LAWRENCE, Ch. J.: Lorenzo Hayes, Smith B. Hamilton, Godfrey M. Davis, Willie Campbell, Uley Hamilton and Lee H. Stephens, individually and on behalf of others similarly situated, are Negro employees of the Seaboard Coast Line Railroad Company. They filed this class

action against their employer and against the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Local #1338, BRAC, and Local #1587, BRAC, defendants, charging discrimination by the defendants. The complaint seeks an injunction, declaratory judgment, back pay, costs and attorneys' fees.

The defendant Seaboard Coast Line Railroad Company filed a "Motion To Dismiss For Failure To Join Indispensable Parties" on October 14, 1970, alleging that there should be joined in this action "those individual clerks employed by defendant Seaboard Coast Line whose seniority will be adversely affected by the relief demanded by plaintiffs.

Reference to the complaint discloses that to grant the prayers of plaintiffs' complaint would require a judgment which would affect the seniority rights of the white employees.

In *Banks* v. *SCL, et al.*, [3 EPD ¶ 8059] 51 F.R.D. 304 (1970), the Court held:

> "Since any order or judgment rendered in this case in favor of plaintiff and the class for which he sues would under plaintiff's allegations place plaintiff and others in a higher possition of seniority than they are now enjoying, the judgment would necessarily change the status of the white employees in whose favor the alleged discrimination exists.
>
> "The Brotherhood has an equal duty to represent those members comprising the class which plaintiff represents as well as the white employees whose interest would be realigned by any order granting relief to plaintiff. It thus appears that the white employees' interest is not the same as the Brotherhood's and that the Brotherhood cannot fairly and adequately represent the interest of the class."

The proper remedy for the lack of "indispensable parties" is the joinder of those persons as parties defendant. This Motion to Dismiss by the Seaboard Coast Line Railroad Company therefore will not be granted, but rather, as suggested by the plaintiffs, the action will be stayed until such time as the plaintiffs file an amendment naming as respondent one or more of the white employees included in said class, whereupon this Court will pass an order pursuant to Rule 23(a)(c) providing for service upon said class to show cause why they should not be joined as respondents.

The defendant railroad filed a "Second Motion to Dismiss For Failure to Join An Indispensable Party" on February 1, 1971. Carefully considering it and the attached affidavit of A. S. Hubert, it is the Court's opinion that what is sought to be presented is evidence that the defendant railroad inherited the classification relative to two of the plaintiffs and that it is a bona fide seniority system. Viewing it in this light, the Court overrules the motion without prejudicing the Seaboard Coast Line Railroad Company's right to present such facts at the trial.

APPENDIX 4

[¶ 8320] Lorenzo Hayes et al., Petitioners v. Seaboard Coast Line Railroad Company et al., Respondents.

United States Court of Appeals, Fifth Circuit. Misc. No. 2145. August 20, 1971.

On Application for Leave to Appeal from an Interlocutory Order of United States District Court, Southern District of Georgia, Savannah Division.

Title VII—Civil Rights Act of 1964

Seniority Rights—Court Action—Indispensable Parties —Time for Appeal.—Leave to appeal from an order relating to a question of making white employees affected by relief sought parties to the action must be denied for lack of timely filing.

Denying leave to appeal from (DC Ga. 1971) 3 EPD ¶ 8170, which issued following rulings in (DC Ga. 1968) 1 EPD ¶ 9936, 59 LC ¶ 9179, and (DC Ga. 1968) 1 EPD ¶ 9953, 59 LC ¶ 9196, 46 F.R.D. 49.

Fletcher Farrington, Hill, Jones & Farrington, for Petitioners.

Edward Charron, and Charles Edwards and Malcolm Maclean, Connerat, Dunn, Hunter, Houlihan, Maclean & Exley, P. C., Savannah, Georgia, for Respondent Seaboard Coast Line R. R. Co.

A. Pratt Adams, Adams, Adams, Brennan & Gardner, Savannah, Georgia, and James L. Highsaw, Highsaw & Mahoney, Washington, D. C., for Respondent Brotherhood of Steamship and Railway Clerks, Freight Handlers, Express and Station Employees.

Before BROWN, Chief Judge, INGRAHAM and RONEY, Circuit Judges.

PER CURIAM: It is ordered that leave to appeal from the interlocutory order of the United States District Court for the Southern District of Georgia entered on July 2, 1971, in the above styled and numbered cause, is hereby denied for want of jurisdiction. F. R. App. P., Rule 5(a) provides a ten-day period in which to file a petition for permission to appeal under § 1292(b). Rule 26(b) provides that "the court may not enlarge the time for filing . . . a petition for permission to appeal." Filing is not timely unless received by the Clerk within the time fixed. FRAP 25(a). Apparently mailed on July 12, 1971, the petition did not reach the Clerk within ten days after July 2, the date of the district court certificate. *Jack Neilson, Inc.* v. *Tug Peggy*, 428 F.2d 54 (5th Cir. 1970). *Borskey* v. *American Pad & Textile Co.*, 296 F.2d 894 (5th Cir. 1961).

APPENDIX 5

[¶ 8316] William English, Jr., Plaintiff v. Seaboard Coast Line Railroad Company et al., Defendants.

United States District Court, Southern District of Georgia, Waycross Division. No. 691. August 17, 1971.

Title VII—Civil Rights Act of 1964

Suit by Private Party—Class Action—Notices—Added Causes of Action.—In an action brought by a private party claiming employment discrimination, the class represented by the complainant is defined as all Negro employees at a particular location of the railroad employer belonging to, or eligible for membership in, either of two defendant local unions, with notices to be given the class of plaintiffs, and leave granted to add causes of action under the Civil Rights Act of 1866. 42 U.S.C. Secs. 1981, 2000e.

Suit by Private Party—Discovery Procedures—Statistical Information—Attorneys' Fees.—Requests of complaining party for production of documents and for admission of facts are granted with limitations on the scope of the information sought to that relevant to the defined class represented in the action and with an allowance that the employer may qualify statistics furnished by providing explanations in the way of business necessities and the results of a good faith seniority system. A case of discrimination cannot be predicated solely upon mathematical computations. Motions by both parties to compel attorneys' fees regarding discovery measures were denied. 42 U.S.C. Sec. 2000e.

Fletcher Farrington, Bobby L. Hill, Hill, Jones & Farrington, Savannah, Georgia, and Morris J. Baller, New York, New York, for Plaintiff.

Malcolm Maclean, Charles Edwards, Connerat, Dunn, Hunter, Houlihan, Maclean & Exley, P. C., Stanley Karsman, Falligant, Doremus & Karsman, Savannah, Georgia, and James L. Highsaw, Highsaw & Mahoney, Washington, D. C., for Defendants.

LAWRENCE, Ch. J.: The motions of all parties were extensively argued by counsel this 13th day of August, 1971, and it is Ordered as follows:

1. Defendant Seaboard Coast Line Railroad Company's motion to define the class which plaintiff represents is granted. I specify that the class represented by plaintiff will include Negro employees of the Seaboard Coast Line Railroad Company at or near Waycross, Georgia, who belong to or are eligible for membership in either of the two defendant locals of BRAC, Number 5 and Number 1586, by reason of job classification. *Hayes* v. *Seaboard Coast Line Railroad Company*, [1 EPD ¶ 9953] 59 LC ¶ 9196, page 6776, (1968).

2. Defendant Seaboard Coast Line Railroad Company's motion to require notice to the class of plaintiffs, pursuant to Federal Rules 23(b)(3), is granted. As I ruled in *Hayes* v. *Seaboard Coast Line Railroad Company*, [1 EPD ¶ 9936] 59 LC ¶ 9179, page 6720, (1969), the allegations by defendant Seaboard Coast Line Railroad Company "abundantly meet all the requirements of Rule 23 (b)(2). According to the Advisory Committee report, the reach of that subparagraph is illustrated by actions in the Civil Rights field when a defendant is charged with discrimination against a class whose members are capable of specific enumeration." A form of notice and the manner of providing notice shall be presented for my consideration by counsel, in the same manner as notice was accomplished in *Hayes* v. *Seaboard Coast Line Railroad Company*.

3. The motion by the defendant Seaboard to make individual white men who will be displaced or affected in any way by the plaintiff prevailing in this lawsuit parties to this lawsuit is ordered held in abeyance until the Fifth Circuit has ruled in the case of *Hayes* v. *Seaboard Coast Line Railroad Company*, 3 EPD ¶ 8170, which is now on interlocutory appeal. See also *Banks* v. *Seaboard Coast Line Railroad Company*, [3 EPD ¶ 8059] 51 FRD 304 (N.D. Ga. 1970).

4. The motion of defendant Seaboard to compel answers to its interrogatories filed June 3, 1971, is granted. Plaintiff is allowed thirty (30) days after service of defendant Seaboard's answers to interrogatories to provide the requested answers.

5. Plaintiff's first motion for leave to amend, to add causes of action under 42 U.S.C. §§ 1981 and 1983, is granted as to § 1981, there appearing to be no substantial reasons in law or in fact for denying said amendment. *Coldwell* v. *National Brewing Co.*, 3 EPD ¶ 8241 (5th Cir., 1971); *Sanders* v. *Dobbs Houses, Inc.*, [3 EPD ¶ 8019] 431 F.2d 1097 (5th Cir., 1970). As to 42 U.S.C. ¶ 1983, plaintiff's counsel assured me that its inclusion was a typographical error. All references to that statute are therefore ordered stricken from the pleadings in this case, and all motions related thereto are rendered moot.

6. Plaintiff's counsel concurred with the Seaboard's motions to strike all references to "apprenticeship" in the pleadings as it appears that defendants utilize no apprenticeship program, and said motions are granted. For the same reasons, defendant Seaboard Coast Line Railroad Company's motion to strike the references to racially segregated toilets, washrooms, lockers and drinking fountains is granted.

7. It appearing that arguments predicated upon the appropriate statute of limitations for claims arising under 42 U.S.C. § 1981 would be better dealt with in conjunction with a determination of back pay claims at a later stage of this litigation, all motions relating to *laches* and the statute of limitations are held in abeyance until a future date to be determined by this Court.

8. A number of motions were advanced by all parties to compel the production of information by means of the discovery procedures provided by the Federal Rules. With respect to those motions, it is Ordered:

(a) The motion of plaintiff to compel answers to his second interrogatories to the Seaboard is granted as to interrogatories 1, 2, 3, 4, 8, 9, 10(b), 10(c) and 18, and denied as to interrogatories 5(b), 5(c), 5(d) and 10(d). Orders respecting all other interrogatories involved in this motion are withheld pending an investigation by plaintiff as hereinafter described.

(b) Plaintiff's "Request for Production of Documents" dated June 10, 1971, is granted with the following qualifications: The scope of information sought shall be limited to that relevant to the class of plaintiff as defined in this order, and the requested documents will be provided by defendant Seaboard Coast Line Railroad Company for inspection and copying by plaintiff's counsel at a mutually convenient time within sixty (60) days, said inspection to take place where said documents are stored in Waycross, Georgia.

(c) That defendant Seaboard respond to plaintiff's Requests for Admission of Facts within sixty (60) days. The Seaboard Coast Line Railroad Company may admit, deny, or give reasons for its inability to admit or deny, pursuant to Rule 36, and may append to its answers by footnote or addendum such qualifications or explanations as it deems necessary. However, the plaintiff will not be permitted to rely in this case upon statistics alone. This Court does not believe that a case of discrimination can

be predicated solely upon mathematical computations. The defendant Seaboard must furnish the statistics requested by the plaintiff in his "Requests for Admission of Facts" but Seaboard may qualify its answers in the form of footnotes or addenda added to its answers which can provide the explanations advanced by counsel today, to wit: business necessity and that the statistics demonstrate the results of a bona fide seniority system.

[9.—omitted by court.]

10. While plaintiff's counsel and BRAC's counsel argued their conflicting motions and responses at considerable length, at the conclusion of the hearing they were able to agree on what each would furnish the other and the Court sees no reason to clutter this judicial record further.

11. All motions by the defendants alleging failure to exhaust administrative remedies and as to improper or incomplete procedures by the Equal Employment Opportunity Commission are denied. *Caldwell* v. *National Brewing Company, supra.*

12. Defendant Seaboard Coast Line Railroad Company's motion for summary judgment filed January 21, 1971, is denied, it appearing that there are material issues of fact.

13. Plaintiff's and defendant Seaboard's motions to compel attorney's fees regarding discovery measures are denied.

APPENDIX 6

[¶ 7505] William English, Jr., Plaintiff v. Seaboard Coast Line Railroad Company et al., Defendants.

United States District Court, Southern District of Georgia, Waycross Division. Civil No. 691. September 7, 1971.

Title VII—Civil Rights Act of 1964

Racial Discrimination—Railroad Employees—Seniority Rights—Indispensable Parties.—In view of the fact that the relief sought by a Negro railroad employee in an action against the railroad and the union representing its employees would, if granted, affect the seniority rights of white employees, the action must be stayed pending amendment of the complaint to add one or more of the white employees included in the class that would be affected. 42 U.S.C. Secs. 1981, 2000e.

Temporarily staying proceedings in (DC Ga. 1971) 3 EPD ¶ 8316.

Fletcher Farrington, Bobby L. Hill, Hill, Jones & Farrington, Savannah, Georgia, and Morris J. Baller, New York, New York, for Plaintiff.

Malcolm Maclean, Charles Edwards, Connerat, Dunn, Hunter, Houlihan, Maclean & Exley, P. C., Stanley Karsman, Falligant, Doremus & Karsman, Savannah Georgia, and James L. Highsaw, Highsaw & Mahoney, Washington, D. C., for Defendants.

LAWRENCE, Ch. J.: William English, Jr., individually and on behalf of others similarly situated, is a Negro employee of the Seaboard Coast Line Railroad Company. He filed this class action against his employer and against the Brotherhood of Railway, Airline, and Steamship Clerks, Freight Handlers, Express and Station Employees, Local #5, BRAC, and Local #1586, BRAC, de-

fendants, charging discrimination by the defendants. The complaint, filed under both Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, and the Civil Rights Act of 1866, 42 U.S.C. § 1981, seeks an injunction, declaratory judgment, back pay, costs and attorneys' fees.

The defendant Seaboard Coast Line Railroad Company filed a "Motion to Dismiss for Failure to Join Indispensable Parties" on October 12, 1970, alleging that there should be joined in this action "those individual clerks employed by defendant Seaboard Coast Line Railroad Company whose seniority will be adversely affected by the relief demanded by plaintiff."

On August 17, 1971, this Court rendered the following order [3 EPD ¶ 8316]:

> The motion by the defendant Seaboard to make individual white men who will be displaced or affected in any way by the plaintiff prevailing in this lawsuit is ordered held in abeyance until the Fifth Circuit has ruled in the case of *Hayes* v. *Seaboard Coast Line Railroad Company*, 3 EPD ¶ 8170, which is now on interlocutory appeal. See also *Banks* v. *Seaboard Coast Line Railroad Company*, [3 EPD ¶ 8059] 51 FRD 304 (N.D. Ga. 1970).

Since that order, the Fifth Circuit has denied the *Hayes* appeal as untimely filed (Misc. No. 2145, August 20, 1971 [3 EPD ¶8320]).

Faced with the same fact situation in the *Hayes* case, *supra*, this Court ordered the joinder of the individual white clerks as parties defendant, stating:

> Reference to the complaint discloses that to grant the prayers of plaintiff's complaint would require a judgment which would affect the seniority rights of the white employees. 3 EPD ¶ 8169, p. 6531 (1971).

The *Hayes* decision was rendered in light of the order of the Northern District of Georgia in *Banks* v. *Seaboard Coast Line Railroad Co.*, 51 F.R.D. 304, 3 EPD ¶ 8059 (1970):

> Since any order or judgment rendered in this case in favor of plaintiff and the class for which he sues would under plaintiff's allegations place plaintiff and others in a higher position of seniority than they are now enjoying, the judgment would necessarily change the status of white employees in whose favor the alleged discrimination exists.
>
> The Brotherhood has an equal duty to represent those members comprising the class which plaintiff represents as well as the white employees whose interest would be realized by any order granting relief to plaintiff. It thus appears that the white employees' interest is not the same as the Brotherhood's and that the Brotherhood cannot fairly and adequately represent the interest of the class.

The same reasons obtain in the instant case. Therefore, the action will be stayed until such time as the plaintiff files an amendment naming as defendant one or more of the white employees included in said class, whereupon this Court will pass an order pursuant to Rule 23(a) providing for service upon said class to show cause why they should not be joined as defendants. *Hayes* v. *Seaboard Coast Line Railroad Company*, 3 EPD ¶ 8170, p. 6531 (S.D. Ga. 1971).

APPENDIX 7

[¶ 7645] William English, Jr., Plaintiff v. Seaboard Coast Line Railroad Company et al., Defendants.

United States District Court, Southern District of Georgia, Waycross Division. Civil No. 691. January 28, 1972.

Title VII—Civil Rights Act of 1964

Racial Discrimination—Segregated Local Unions—Consolidated Order.—Upon the evidence presented in an action alleging unlawful discrimination in employment opportunities because of race, two local unions are directed to surrender their separate charters, to transfer the assets and liabilities to a consolidated lodge, and to assign the officers of the respective locals to the consolidated lodge on a plan designed to provide transitional protection to members of the former locals in regard to representation.

Issuing order in (DC Ga. 1971) 3 EPD ¶ 8316, following stay order at (DC Ga. 1971) 4 EPD ¶ 7505.

Morris Baller, Barry L. Goldstein, New York, New York and Fletcher Farrington, Hill, Jones & Farrington, Savannah, Georgia, for Plaintiff.

Conneratt, Dunn, Hunter, Houlihan, MacLean & Exley, P. C., Savannah, Georgia, for Defendant Seaboard Coast Line Railroad Co.

William J. Donlon, General Counsel, and Stanley Karsman, Falligant, Doremus & Karsman, Savannah, Georgia, for Defendant Brotherhood of Railway and Airline Clerks.

LAWRENCE, Ch. J.: After evidence being presented it is ordered that: (1) Local Lodge No. 5 and Local Lodge No. 1586 will immediately surrender the charters of their respective local lodges to the Grand Lodge and the Grand Lodge will issue a new charter to the combined lodge.

(2) That all assets and liabilities of Lodges 5 and 1586 shall be transferred to the consolidated lodge to be used for the general purposes of the lodge except that no funds will be expended for attorneys' fees in this cause of action until further order of the Court.

(3) That the officers of the merged lodge for term ending December 31, 1974, will be as follows: The current President of Lodge No. 5 will be the President of the combined lodge. The current Vice-president of Lodge No. 1586 will be the Vice-president of the combined lodge. The current Secretary-Treasurer of Lodge No. 5 will be the Financial Secretary-Treasurer of the combined lodge. The current Recording Secretary of Lodge No. 1586 will be the Recording Secretary of the combined lodge. The current Legislative Representative of Lodge No. 5 will be the Legislative Representative of the combined lodge. The current Chairman of the Protective Committee of Lodge No. 5 will be the Chairman of the Protective Committee of the merged lodge. The current Chairman of the Protective Committee of Lodge No. 1586 will be appointed as Assistant Local Chairman of the combined lodge and will for the period set forth above retain his membership on System Board No. 3 with the full rights attached thereto.

(4) That the combined lodge will have sufficient members on its Protective Committee to serve the former membership of Lodge No. 5 and the former membership of Lodge No. 1586.

(5) The present Trustees of Lodge No. 5 and Lodge No. 1586 will hold a meeting as soon as practical and will decide upon three members for the Board of Trustees of the merged lodge. The Trustee from the lodge which only has one Trustee chosen for the Board of Trustees of the merged lodge will become the Chairman of that Board of Trustees.

(6) The agreement between the officers of Lodge No. 5 and Lodge No. 1586 as set forth in a letter dated December 3, 1971, and signed by L. P. Buller will be effectuated.

(7) That the merger and issuance of the new charter shall be effective as of January 1, 1972.

APPENDIX 8

[¶ 7931] William English, Plaintiff-Appellant v. Seaboard Coast Line Railroad Company et al., Defendants-Appellees.

United States Court of Appeals, Fifth Circuit, No. 71-3362. August 7, 1972.

On Appeal from United States District Court, Southern District of Georgia.

Title VII—Civil Rights Act of 1964

Racial Discrimination—Joinder of Parties—Seniority Rights—Adversely Affected Workers.—A district court's stay of a court action pending amendment of a complaint to add one or more white employees, whose seniority rights would be affected if relief sought by a Negro employee against a railroad and the union representing its employees were granted, was affirmed. A contention that the white employees were not "parties to be joined if feasible" within the meaning of a federal procedural rule because the union would adequately represent the interests of the white employees was rejected. The district court was justified in finding that, in the circumstances of this case, the seniority rights of the absent white employees would be affected adversely if the requested relief was granted and that the union could not adequately and fairly represent the interests of both black and white members. Disposition of the case without the absent white employees who had an interest in the action could as a "practical matter impair or impede" their ability to protect their interests within the meaning of the federal rule. Since the district court did not specifically order joinder as required under federal rules, but only stay the action until such time as the plaintiff filed an amendment naming as defendant one or more of the affected white employees, the cause was remanded with direction to the court to

modify its order so as to specifically direct joinder. 42 U.S.C. Secs. 1981, 2000e.

Back reference.—¶ 2510.15.

Modifying, affirming and remanding (DC Ga. 1971) 4 EPD ¶ 7505, issuing stay of order following ruling issued in (DC Ga. 1971) 3 EPD ¶ 8316 and (DC Ga. 1972) 4 EPD ¶ 7645.

Fletcher Farrington, Savannah, Georgia, Morris J. Baller, New York, New York and Peter A. Janiak, Washington, D. C., for Plaintiff-Appellant.

Stanley Karsman, Malcolm Maclean, Edward A. Charron, Charles A. Edwards, Mark M. Silvers, Jr., Savannah, Georgia and James L. Highsaw, Jr., Washington, D. C., for Defendants-Appellees.

Before BROWN, Chief Judge, and GEWIN and AINSWORTH, Circuit Judges.

GEWIN, C. J.: This is an interlocutory appeal under the provisions of 28 U.S.C. § 1292(b) from an order of the district court upon a "motion to dismiss for failure to join indispensable parties" made by Seaboard Coast Line Railroad Company (Seaboard), appellee.[1] The district court denied the motion but stayed the action.

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[1] Neither the district court's order of September 7, 1971 nor its amended order of September 18, 1971 (in which it certified the order as appealable under 1292(b) specifically refer to Rule 19. However a failure to join a party under Rule 19 is a ground for a Rule 12(b) motio. to dismiss. Rule 12(b)(7) FRCP. Furthermore, the briefs of the parties make clear that the court's decision was predicated upon that rule. Rule 19 is quoted below in pertinent part:

(a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated

until such time as the plaintiff files anamendment naming as defendant one or more of the white employees included in said class, whereupon this Court will pass an order pursuant to Rule 23(a) providing for service upon said class to show cause why they should not be joined as defendants.

English contends on appeal that the white employees are not parties to be joined if feasible under Rule 19(a) FRCP because the present union defendants adequately represent their interests. We reject that contention and affirm as modified and remand.

This employment discrimination suit was brought by the appellant William English, Jr., in behalf of himself and other similarly situated black employees of Seaboard against Seaboard and against the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC), Local Num-

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that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or other inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) Determination by Court Whenever Joinder not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the persons' absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

ber 5 of BRAC and Local Number 1586 of BRAC. English and the class he represents are members of BRAC. At the time the suit was brought black employees were members of one local and the white employees of the other. Since that time the two locals have merged by order of the district court.[2]

The complaint was filed under both Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(e) et seq. and the Civil Rights Act of 1866, 42 U.S.C. § 1981.[3] The gist of the complaint is that there is "across the board discrimination" by Seaboard and BRAC against English and his class. More specifically, the complaint alleges, "a racially segregated, dual system of jobs and lines of progression"; restriction of blacks to inferior jobs; unequal application of job requirements to blacks seeking traditionally white jobs; and a "lock-in" seniority system which perpetuates racially identifiable dual job categories. The complaint further alleges that BRAC has breached its duty of fair representation in that it has participated or acquiesced in Seaboard's discriminatory practices through collective bargaining agreements.

English and the members of his class are black employees of Seaboard in Waycross, Georgia; all employees and job classifications involved are within the BRAC craft unit for collective bargaining purposes. Within the craft unit there are two groups, Group 1 and Group 2, which English describes as "roughly corresponding to clerk's and laborer's jobs, respectively. Group 1 jobs pay better and are more prestigious than Group 2 jobs. The majority of whites hold Group 1 jobs, but there are no blacks in this group category.

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[2] *English* v. *Seaboard Coast Line RR*, 4 CCH EPD ¶ 7645 (S.D. Ga. 1972).

[3] The original complaint referred only to Title VII. In a subsequent amendment, the 1981 claim was added, and jurisdiction was also invoked pursuant to 28 U.S.C. § 1337.

Under the collective bargaining agreement between BRAC and Seaboard, Group 1 seniority and Group 2 seniority are kept separate. Group 2 seniority is not transferable to Group 1 in the event of transfer or promotion. In view of the fact that all blacks are in Group 2 no blacks have any usable seniority rights for Group 1 jobs. Seaboard seeks to join the white clerks in Group 1 whose seniority might be adversely affected should English prevail on the merits.[4]

The district court denied the motion to dismiss but stayed the action until such time as one or more white employees were joined. In doing so the court relied on one of its earlier decisions which reached a similar result, *Hayes* v. *Seaboard Coastline R. R.*[5] The rulings of the district court in both the instant case and in *Hayes* were based largely on *Banks* v. *Seaboard Coast Line R. R.*[6] In Banks the court ordered that if plaintiffs failed to join one or more of the white employees the motion to dismiss would be granted.

The district court felt that in the circumstances of this case the seniority rights of the absent white employees would be affected adversely if the requested relief was granted and that the union could not adequately and fairly represent the interests of both black and white members. We view these conclusions as a finding under Rule 19(a)(2)(i) that disposition of the case without the absent white employees who have an interest in the

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[4] The following is from the brief of appellant English:

As relief, plaintiff seeks, *inter alia*, appropriate modification of the existing seniority system. Such relief would no doubt include an order allowing qualified Group 2 employees to exercise their accrued seniority rights in applying or bidding for transfer or promotion into Group 1 jobs, possibly in competition with present white Group 1 employees.

[5] 3 CCH EPD ¶ 8170 (S.D. Ga. 1971).

[6] [3 EPD ¶ 8059] 51 F.R.D. 304 (N.D. Ga. 1970).

action may as a "practical matter impair or impede" their ability to protect their interests.

Obviously Seaboard cannot and does not advance a serious claim that the District Court lacks plenary authority to eradicate all remaining vestiges of racial discrimination which infect collective bargaining agreements relating to the transfer and promotion of its employees. The power to effect employer-union color-blindness is indisputable.[7] Likewise, Seaboard recognizes that this Court has formulated or approved the implementation of decrees accomplishing that result in a number of cases in which individual white union members were not joined as representative defendants under Rules 19(a) and 23. *United States* v. *Jacksonville Terminal Co.*, 5 Cir., 1971 [3 EPD ¶ 8324] 451 F.2d 418, *cert. denied*, 1972, [4 EPD ¶ 7774] —— U.S. ——, —— S. Ct. ——, 31 L.Ed.2d 815; *Vogler* v. *McCarty, Inc.*, 5 Cir., 1971, [4 EPD ¶ 7581] 451 F.2d 1236; Local 189, *United Papermakers and Paperworkers* v. *United States*, 5 Cir., 1969, [2 EPD ¶ 10,047] 416 F. 2d 980, *cert. denied*, 1970, [2 EPD ¶ 10,177] 397 U.S. 919, 90 S. Ct. 926, 25 L.Ed.2d 100. Consequently, there is no room now for an argument that in *all* circumstances in which the implementation of a remedy may conceivably affect the employment interests of white union members the District Court *must* find that the union alone does not adequately represent its white membership.

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[7] In a long series of cases beginning with *Steele* v. *Louisville & Nashville Railroad Co.*, 1944, [1 EPD ¶ 9607] 323 U.S. 192, 65 S. Ct. 226, 89 L. Ed. 173 the Supreme Court of the United States "has emphatically and repeatedly ruled that an exclusive bargaining agent under the Railway Labor Act is obligated to represent all employees in the bargaining unit fairly and without discrimination because of race and has held that the courts have power to protect employees against such invidious discrimination." *Conley* v. *Gibson*, 1957, [1 EPD ¶ 9656] 355 U.S. 41, 42, 78 S. Ct. 99, —, 2 L. Ed. 2d 80, 82.

Even in circumstances in which the union cannot adequately represent both black and white members because the remedy ultimately devised may entail an irreconcilable conflict between the interests of those members, it is clear that Rule 19(a) has never required joinder in every case in which "interests" of white persons may be adversely affected by a court decree terminating racially discriminatory practices. For example, within the context of public school desegregation there are innumerable instances in which white children, parents and teachers will be deprived of "rights" (for example, the "right" to attend a neighborhood school) without ever having had the opportunity to participate directly in the judicial proceedings which divest them of those "rights." Moreover, when these adversely affected groups have themselves taken the initiative by seeking to intervene under Rule 24, we have frequently declined to permit it. *St. Helena Parish School Board* v. *Hall*, 5 Cir., 1961, 287 F.2d 376, 379, *cert. denied*, 368 U.S. 830, 82 S. Ct. 52, 7 L.Ed.2d 33; *Horton* v. *Lawrence County Board of Education*, 5 Cir., 1970, 425 F.2d 735; *Benett* v. *Madison County Board of Education*, 5 Cir., 1970, 437 F.2d 554. We perceive no basis for the supposition that a union's representation of its membership is different in principle from a school board's representation of the community. In either case the defendant is being compelled to eliminate the consequences of unlawful racial discrimination by taking measures inimical to the traditional advantages of white persons having a vested interest in the status quo.

However, as a practical matter we must recognize that the elimination of racial discrimination in private employment frequently entails a much more involved, subjective accommodation of competing black-white interests because of the limited number of job vacancies and the direct, immediate impact on employee interests that re-

sults from any change in existing seniority levels.[8] In such litigation the District Court may well regard individual white representation as insurance that the ultimate goal of terminating discrimination is accomplished in the most equitable and least disruptive manner possible. When an experienced Trial Judge reaches such a conclusion we cannot disregard it in the absence of compelling and persuasive justification, particularly in light of the Court's traditional broad discretion to order joinder under Rule 19. "While this discretion may not have the constrictions of a clearly erroneous rule, we must be mindful that the district judge is closer to the arena and is often in a better position to survey the practicalities involved in the litigation." *Broussard* v. *Columbia Gulf Transmission Co.*, 5 Cir., 1968, 398 F.2d 885, 889.

We find no merit in the contention of English that since the white employees are not parties to the collective bargaining agreement they have no interest in this litigation. Black employees, not the company or the union, instituted this action. While the rights of employees may be affected adversely without their presence as a result of collective bargaining, a suit in federal court brought by black employees is simply a different situation. Rule 19 permits the joinder of employees under proper circumstances; there is no such rule which applies to collective bargaining.

The remaining issue raised by English is that since white employees have not sought to intervene they must have no interest in participating in this litigation. There is no evidence before the court of any lack of interest by white employees in this suit. In any event, our concern here is not with how white employees might feel personally about joining in this litigation but whether joinder

[8] *United States* v. *Jacksonville Terminal Co., supra*, 451 F.2d at 460 (dissenting opinion); *Vogler* v. *McCarty, Inc., supra*, 451 F.2d at 1239 (dissenting opinion).

under Rule 19(a) was proper. We conclude that the district court did not err in its finding that joinder is appropriate.

However, the court here did not order joinder but instead stayed the action until such time as English filed an amendment naming as defendant one or more of the affected white employees. Such an order is not in full accord with the mandate of Rule 19(a). Under that rule the remedy for nonjoinder is joinder by order of the court.[9] When the court decides under Rule 19(a) that a person should be joined the court should direct the plaintiff to amend his complaint to add the person. Failure to comply with such an order may result in dismissal of the plaintiff's action under Rule 41(b) FRCP for failure of a party to comply with an order of court.[10] Dismissal under Rule 19 is proper only after it is shown that a 19(a) party *cannot* be joined and that in equity and good conscience the case should not proceed without such party. There is no indication here that the white employees could not be joined, hence a 19(b) determination was not required in the present posture of the case.

The Equal Employment Opportunity Commission (EEOC) has filed an *amicus curiae* brief in this appeal protesting[11] that

[9] See *Ferguson* v. *Thomas*, 430 F.2d 852, 860 (5th Cir. 1970); *Schutten* v. *Shell Oil Co.*, 421 F.2d 869, 873 (5th Cir. 1970); 7 Wright, Federal Practice & Procedure §§ 1609, 1611 —at 83, 108 (1972).

[10] *Transit Casualty Co.* v. *Security Trust Co.*, 396 F.2d 803 (5th Cir. 1968); see *Window Glass Cutters League* v. *American St. Gobian Corp.*, 428 F.2d 353 (3d Cir. 1970).

[11] The EEOC also contends that if the white employees are to be joined, joinder should be under Rule 21 FRCP. While Rule 21 might be used as a wholly separate means of joinder we find it unnecessary to decide that question since we have already concluded that joinder under Rule 19(a) was appropriate.

> holding that white employees are *indispensable* to a federal court adjudication that a collective bargaining agreement violates Title VII would perforce make white employees *indispensable* in the commission's administrative process. Such a process would, we submit, inject parties into the Commission's process which Congress contemplated would be represented by the parties to the collective bargaining agreement. (emphasis added.)

We make no finding of indispensability here. Only where joinder is not feasible must the court proceed under 19 (b) to determine whether to proceed or dismiss for lack of an indispensable party. And only if the court decides that it must dismiss because of the absence of a 19(a) party is that party given the conclusory label "indispensable." [12]

Of course, we do not even faintly suggest that the ultimate inability of the plaintiffs to join representative white defendants in a suit seeking an end to unlawful employment discrimination would necessitate or justify the dismissal of the action.[13] And again we wish to emphasize that our decision does not mean that in every case of this type affected white employees must be joined under Rule 19(a). That determination must necessarily be made by the district court in consideration of the facts and circumstances of each particular case. We decide

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[12] See *Provident Bank & Trust Co.* v. *Patterson*, 390 U.S. 103, 19 L. Ed. 2d 936 (1968); *Schutten* v. *Shell Oil Co.*, 421 F.2d 869, 873 (5th Cir. 1970); 7 Wright, *supra* note 7, at § 1607.

[13] The theory that such individuals are "indispensable parties" under Rule 19(b) has frequently encountered a hostile reception in the courts. *United States* v. *Pilot Freight Carriers, Inc.*, W.D. N.C. 1972, 4 EPD ¶ 7709; *United States* v. *St. Louis-San Francisco Railroad Co.*, E.D. Mo., 1971, [3 EPD ¶ 8263] 52 F.R.D. 276; cf. *Bowe* v. *Colgate-Palmolive Co.*, 7 Cir., 1969, [2 EPD ¶ 10,090] 416 F.2d 711 (sex discrimination); *Thompson* v. *New York Central Railroad Co.*, S.D. N.Y., 1966, 250 F.Supp. 175.

here only that upon the facts of this case we think the district court was justified in deciding that white employees should be joined.

Although we do not vacate the order of the district court, we remand the cause with directions that the court modify its order so as to specifically direct joinder of one or more of the white employees. This modification does not affect that portion of the court's order made pursuant to Rule 23(a). We note in conclusion that this case is now over two years old and it is still in the pleading stage. Without attempting to designate responsibility for this delay, we urge all concerned to proceed in good faith to bring this litigation to a close.

Modified. Affirmed and Remanded.

APPENDIX 9

[¶ 8018] William English, Jr., Plaintiff v. Seaboard Coast Line Railroad Company, et al., Defendants.

United States District Court, Southern District of Georgia, Waycross Division. Civil No. 691. September 1, 1972, October 18, 1972 and October 24, 1972.

Title VII—Civil Rights Act of 1964—
Civil Rights Act of 1866

Racial Discrimination—Joinder of Parties—Seniority Rights—Adversely Affected Workers—Remedial Order.—A Negro plaintiff must join white fellow members of the union whose seniority would be adversely affected and the Judge has found that the defendant union cannot adequately represent their interests. Order is entered pursuant to the mandate of a higher court. Defendant railroad's motion for jury trial under 1866 Act is denied.

Back reference.—¶ 2510.15.

Issuing orders on remand in (CA-5 1972) 4 EPD ¶ 7931, which modified affirmed and remanded (DC Ga. 1972) 4 EPD ¶ 7461, issued after stay in (DC Ga. 1971) 4 EPD ¶ 7505, of order in (DC Ga. 1971) 3 EPD ¶ 8316.

Fletcher Farrington, Jones, Hill and Farrington, Savannah, Georgia, for the Plaintiff.

Malcolm Maclean and Charles A. Edwards, Connerat, Dunn, Hunter, Houlihan, Maclean & Exley, P. C., Savannah, Georgia; Edward A. Charron, Jacksonville, Florida; Stanley Karsman, Falligant, Doremus & Karsman, Savannah, Georgia; James L. Highsaw, Highsaw and Mahoney, Washington, D.C.; Barnard M. Portman, Smith and Portman, Savannah, Georgia, for the Defendants.

Order of September 1, 1972

LAWRENCE, D. J.: This case was appealed to the United States Court of Appeals for the Fifth Circuit pursuant to the provisions of 28 USC § 1292(b). That Appeal having been decided, and the opinion and mandate of the Court of Appeals having issued, that opinion is hereby adopted as the opinion of this Court.

Wherefore it is hereby ordered that plaintiff William English amend his Complaint to join as defendants one or more white employees of Seaboard Coastline Railroad Company, whose seniority may be affected by the outcome of this case. Failure of plaintiff to so amend his Complaint, within 30 days of the entry of this order, will result in dismissal of this case.

Order of October 18, 1972

LAWRENCE, D. J.: The above cause having come before the Court on motion of defendant Seaboard Coast Line Railroad Company to compel joinder of former members of the Transportation-Communication Employees Union in and near Waycross, Georgia, and briefs and arguments of counsel having been received and considered;

It is Ordered, that the prior order of this Court dated September 1, 1972, is amended to join as parties defendant all former members of the Transportation-Communication Employees Union in or near Waycross, Georgia who are now shown on the July 1, 1972, seniority roster for the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees for the Waycross Division, Seaboard Coast Line Railroad Company;

Further Ordered, that defendant effect notice upon said former members of the TCU in the same manner as was followed with respect to other Group I employees of SCL at or near Waycross.

Order of October 24, 1972

LAWRENCE, D. J.: The above matter having come before the Court upon various motions of the parties, and briefs and arguments of counsel having been received and considered,

It is Ordered:

1. Defendant Seaboard Coast Line Railroad Company's motion for a jury trial of claims pursuant to the 1866 Civil Rights Act, 42 U.S.C. § 1981 is denied for the reasons stated by Judge Smith in *Williams* v. *Travenol Laboratories, Inc.*, [4 EPD ¶ 7918] 344 F.Supp. 163 (N.D. Miss. 1972).

2. On August 17, 1971, I ruled that "the class represented by plaintiff will include Negro employees of the Seaboard Coast Line Railroad Company at or near Waycross, Georgia, who belong to or are eligible for membership in either of the two defendant locals of BRAC, Number 5 and Number 1586, by reason of job classification." 3 EPD ¶ 8316 at p. 7071. Plaintiff now seeks to expand the scope of this litigation to encompass the entire Waycross Division. Defendant SCL in turn asks that the Court confine the action to the Stores Department in Waycross. At this stage of the proceedings, the Court denies both requests, and the prior ruling as to the scope of the case remains in effect.

3. Defendant SCL's motions to compel plaintiff to describe in detail his proposed method for computation of back pay are denied at this time with the suggestion that such information is obtainable through interrogatories to obtain plaintiff's theory.

4. Defendant SCL's motions to dismiss the class action and attorneys' fees portions of the claim under 42 U.S.C. § 1981 are denied.

5. The joinder of former Transportation-Communication Employees Union members at or near Waycross having been accomplished by amended order dated October 18, 1972, defendant SCL's motion directed toward this end is moot.

6. Defendant SCL must supplement its answers to plaintiff's first interrogatories by providing the information requested therein as to all persons added to the scope of this litigation by hiring, transfer or seniority merger since the date of service of those interrogatories.

7. Plaintiff's motions to compel answers to discovery are denied as moot.

8. Defendants Dell Beasley, et al. (the "white clerks") have filed motions to dismiss the complaint for failure to state a claim and for lack of personal jurisdiction. This Court's order of September 7, 1971 ordered joinder of these employees under Rule 19. 4 EPD ¶ 7505. The Fifth Circuit affirmed this ruling on August 7, 1972, (4 EPD ¶ 7931), whereupon I ordered compliance with the mandate of the Court of Appeals on September 1, 1972. There is no relief sought against these defendants by way of injunctive relief or back pay, inasmuch as they were made parties under Rule 19 and the orders of this Court and the Fifth Circuit, and not pursuant to Rule 23(b) or (c). Their motions are denied.

9. Trial of this case shall be in two stages: The first, to commence January 8, 1973 in Savannah, shall deal solely with the question of discrimination *vel non*. All questions of remedy, injunction, back pay, and attorneys' fees shall be reserved for hearing at a later date, after adequate time for preparation by all parties.

APPENDIX 10

[¶ 8970] William English, Jr., Plaintiff v. Seaboard Coast Line Railroad Company et al., Defendants.

United States District Court, Southern District of Georgia, Waycross Division. No. 691. November 16, 1973.

Title VII—Civil Rights Act of 1964
Civil Rights Act of 1866

Racial Discrimination—Railroad—Seniority Systems—Bidding.—An agreement between a railroad and a union which modified a seniority arrangement was adopted. Members of one group were thereby enabled to bid for certain vacancies on the basis of company seniority.

Back reference.—¶ 2510.15

Adopting, after ruling in (DC Ga. 1972) 5 EPD ¶ 8018, remedial agreement in (DC Ga. 1972) 4 EPD ¶ 7461, which was affirmed as modified in (CA-5 1972) 4 EPD ¶ 7931, after stay in (DC Ga. 1971) 4 EPD ¶ 7505, of order in (DC Ga. 1971) 3 EPD ¶ 8316.

Fletcher Farrington and Bobby Hill, Savanah, Georgia, and Morris J. Baller, New York, New York, for Plaintiffs.

Edward A. Charron, Jacksonville, Florida, Barnard Portman, Stanley Kasman, and Connerat, Dunn, Hunter, Houlihan, MacLean & Exley, Savannah, Georgia, and James L. Highsaw, Jr., Washington, D.C., for Defendants.

Order

LAWRENCE, C. J.: By the attached agreement dated January 12, 1973, BRAC Groups 1 and 2 were merged on a date-of-hire basis over the entire SCL system, effective March 1, 1973. The effect of this agreement

is to abolish the distinction made between Group 1 and Group 2, thereby affording to Group 2 employees, both white and black, the opportunity to bid on former Group 1 vacancies on the basis of their seniority date established by the first day of their present continuous service with the Seaboard Coast Line Railroad Company or its predecessor lines.

The memorandum of agreement between SCL and BRAC dated January 12, 1973 is hereby adopted by this Court and made a part of this order. The parties hereto, their officers, agents, employees, servants and all other persons and organizations in active concert or participation with them, are hereby permanently enjoined and restrained from engaging in any employment practice or course of conduct which interferes with or is contrary to this Order.

MEMORANDUM AGREEMENT

Between the

Seaboard Coast Line Railroad Company

And its Employees Represented by

Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees

January 12, 1973

The parties hereto having reached an understanding to abolish separate grouping of the classes of employees represented by the organization signatory hereto, effective March 1, 1973;

It Is Agreed That:

1. There shall be eliminated all references to Groups 1 and 2 in the current working agreement of January

1, 1968, or any currently effective amendments, supplements or interpretations thereto.

2. Each employee now holding seniority in Group 1 or Group 2 on the effective date of this agreement shall be given as his seniority date in the district where he entered the employ of the Company or its predecessor companies, which is identified as his home district, his last date of entry into service on that district on a continuous basis on a position covered by the agreement with B.R.A.C. Employees who have left their home district and have established another seniority date in an elective district shall not have such seniority disturbed in the elective district.

3. After seniority dates have been established in accordance with paragraph 2 hereof, the names of all employees now appearing on separate Group 1 and Grou 2 rosters for each district where there are parallel Group 1 and 2 rosters shall be dovetailed, on seniority basis, into a single roster for each such district. Employees who appear on both rosters shall be given the oldest date on the dovetail roster. In the merging seniority dates, two or more employees are found to have the same date they shall be placed on the dovetailed roster in the order of their birth dates, with the oldest employee shown first.

4. No employee shall, in the operation of this agreement, be entitled to displace other employees; however, they shall thereafter be entitled to place themselves in accordance with the provisions of the current working agreement.

5. Recognizing that the initial issuance of rosters pursuant to this agreement may result in disputes about established seniority dates, it is agreed that the initial issue of rosters shall be open to protest for a period of one hundred twenty (120) days from date of posting. If no protest is registered within that period, the date

shown shall be regarded as correct and not subject to further protest.

6. All agreements, amendments, supplements, or interpretations in conflict with the provisions of the Memorandum Agreement are hereby cancelled insofar as the conflicting portions are concerned.

APPENDIX 11

[¶ 8971] Lorenzo Hayes et al., Plaintiffs v. Seaboard Coast Line Railroad Company et al., Defendants.

United States District Court, Southern District of Georgia, Savannah Division. November 19, 1973.

Title VII—Civil Rights Act of 1964

Racial Discrimination—Railroad Industry—Court Action.—A race bias suit against a railroad and the unions was to proceed toward trial. Certain alleged discriminatees bringing suit were not to be dismissed from the suit nor was the railroad to get partial summary judgment.

Back reference.—¶ 2510.15.

Issuing rulings on pretrial motions in (DC Ga. 1968) 1 EPD ¶ 9936, and motions in (DC Ga. 1968) 1 EPD ¶ 9953, 46 F.R.D. 49, following denial of appeal in (CA-5 1971) 3 EPD ¶ 8320, from (DC Ga. 1971) 3 EPD ¶ 8170.

Bobby L. Hill, Savannah, Georgia, and Jack Greenberg, New York, New York, for Plaintiffs.

Adams, Adams, Brennan & Gardner, Savannah, Georgia, and James L. Highsaw, Jr., Washington, D.C., for Defendants.

Order

LAWRENCE, C. J.: The above action having come before the Court upon motions of the parties as described below, and briefs and arguments of counsel having been received and considered, it is ORDERED:

1. On April 9, 1971, the Court stayed this action pending joinder of individual white employees as parties defendant (3 EPD ¶ 8170); an appeal from that order

was denied by the Fifth Circuit (3 EPD ¶ 8320). Counsel for the parties herein then proceeded to trial with similar issues in *English* v. *Seaboard Coast Line Railroad Company*, Waycross Division, Civil Action No. 691. On January 12, 1973, SCL and BRAC entered into an agreement merging Group 1 and Group 2 on a date-of-hire basis; that agreement has now been incorporated into an order of this Court dated November 16, 1973 [6 EPD ¶ 8970]. Therefore, it appears that the stay is no longer necessary; the order of April 9, 1971 is accordingly vacated.

2. Seaboard Coast Line Railroad Company's fourth motions, for limitation of back pay, are reserved for decision at or following trial.

3. SCL's fifth motion, for joinder of the United Transport Service Employees, is dismissed as moot, the Court having been advised that the UTSE has been merged into the defendant BRAC.

4. SCL's sixth motions, with respect to dismissal of parties plaintiffs, are denied in light of the Fifth Circuit's *en banc* decision on rehearing in *Huff* v. *N. D. Cass Co.*, —— F.2d ——, 6 EPD ¶ 8800 (slip op. dated September 4, 1973), it appearing that regardless of the standing or employment status of the individual the class action is, as a general rule, allowed to proceed absent compelling reasons to the contrary.

5. SCL's motion for partial summary judgment is denied. The motion is based on allegations that two of the plaintiffs, Lee H. Stephens and Willie Campbell, stated on deposition that their complaint stemmed from the dissolution of the Savannah Union Station Company and the consequent loss of seniority of SUSCO employees upon their assimilation into the operations of the Atlantic Coast Line and Seaboard Air [Coast] Line Railroad Com-

panies. This motion creates a question of fact more appropriate for resolution at trial.

6. SCL's motion to compel answers to its second interrogatories is granted, but costs and attorneys' fees are denied. Plaintiffs are ordered to respond fully to said interrogatories within thirty days of the date of this order, all objections thereto having been waived.

APPENDIX 12

[¶ 9032] Lorenzo Hayes, Plaintiff v. Seaboard Coast Line Railroad Company et al., Defendants.

United States District Court, Southern District of Georgia, Savannah Division. No. 2371. December 13, 1973.

Title VII—Civil Rights Act of 1964

Court Action—Railroad Race Bias—Motion to Join Union as Additional Defendant—Denial of Motion.—A local union was not to be added as a defendant to a race bias case against a railroad and others where it would delay the commencement of the trial and the pretrial discovery had been substantially completed.

Back reference.—¶ 2510.15.

Issuing additional rulings on pretrial motions in (DC Ga. 1968) 1 EPD ¶ 9936, following orders in (DC Ga. 1973) 6 EPD ¶ 8971, and (DC Ga. 1968) 1 EPD ¶ 9953, 46 F.R.D. 49, and denial of appeal in (CA-5 1971) 3 EPD ¶ 8320, from (DC Ga. 1971) 3 EPD ¶ 8170.

Bobby L. Hill, Savannah, Georgia, and Jack Greenberg, New York, New York, for Plaintiffs.

Adams, Adams, Brennan & Gardner, Savannah, Georgia, and James L. Highsaw, Jr., Washington, D.C., for Defendants.

LAWRENCE, D. J.: This case came on for its last pretrial hearing. Plaintiffs announced they were withdrawing their motion for a preliminary injunction.

Plaintiffs have filed a motion to join the United Transportation Union as a party defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure and for leave to file an amended complaint attached to the motion. The defendant Brotherhood of Railway, Airline

and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC) has filed a response in opposition to the motion and a supporting memorandum of points and authorities. The Court, upon consideration of the motion and the opposition thereto and having heard argument of counsel, finds that the grant of the motion would unduly delay the disposition of this case in which discovery has been substantially completed and which has been set for trial commencing April 15, 1974, at 10:00 A.M.

It is therefore Ordered that Plaintiffs' motion be and it hereby is denied.

It is Further Ordered, that Plaintiffs' motion to compel answers to their requests for admission of facts is granted, and Seaboard Coast Line Railroad Company is ordered to respond to said requests on or before January 1, 1974.

APPENDIX 13

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

SAVANNAH DIVISION

Civil Action No. CV4-74-69

[Filed in office, U.S. District Court, Southern District of Ga., May 2, 1975, Betty W. Hall, Deputy Clerk]

ULEY HAMILTON, GODFREY DAVIS AND BOOKER T. SNOWDEN,

Plaintiffs,

v.

SEABOARD COAST LINE RAILROAD COMPANY, ET AL.,

Defendants.

ORDER

In this case Booker T. Snowden made a motion to intervene. This was allowed subject to objections. Objections were filed by defendants SCL and UTU. A hearing was had on these objections.

At the hearing plaintiff's counsel Fletcher Farrington moved orally that plaintiff Snowden's claim be severed and transferred to the Waycross Division. This was concurred in by counsel for defendants SCL and UTU.

It appeared from statements by plaintiff's counsel that plaintiff's records with the SCL are in Waycross and that defendants' witnesses who are knowledgeable about the facts in this case are also located in Waycross. Furthermore, plaintiff Snowden is assigned to the Waycross Division of the SCL. It would be a waste of judicial effort for him to dismiss and refile his complaint in Waycross. Accordingly, it is ordered that Booker T. Snowden's claim

is severed from that of Plaintiffs Hamilton and Davis and to that extent the defendants' objections are sustained.

The Clerk is instructed to send all records in the file connected with Booker T. Snowden's claim to the Waycross Division along with a copy of this order. This should include Booker T. Snowden's attempt at intervention, the objections filed by the UTU and SCL, the motions and answer filed by the SCL, the briefs filed by the SCL and UTU, Booker T. Snowden's deposition, and a transcript of the hearing before this Court on the objections to Booker T. Snowden's intervention in which the parties agreed to this order.

In open Court this 2nd day of May, 1975.

/s/ Alexander A. Lawrence
Chief Judge,
U.S. District Court
Savannah Division, Georgia

APPENDIX 14

[¶ 9033] William English, Plaintiff v. Seaboard Coast Line Railroad Company et al., Defendants.

United States District Court, Southern District of Georgia, Waycross Division. No. 691. December 13, 1973.

Title VII—Civil Rights Act of 1964
Civil Rights Act of 1866

Racial Discrimination—Court Action—Class Action—Deferral of Ruling.—Whether to expand the class of Negro railroad employees was deferred until possible consultation with judges handling other bias cases against the same railroad.

Back reference.—¶ 2510.15.

Deferring ruling on motion to expand class in (DC Ga. 1972) 4 EPD ¶ 7461, which was affirmed as modified in (CA-5 1972) 4 EPD ¶ 7931, after issuance of order in (DC Ala. 1973) 6 EPD ¶ 8970, and rulings in (DC Ga. 1972) 5 EPD ¶ 8018, (DC Ga. 1971) 4 EPD ¶ 7505, and (DC Ga. 1971) 3 EPD ¶ 8316.

Fletcher Farrington and Bobby Hill, Savannah, Georgia, and Morris J. Baller, New York, New York, for Plaintiffs.

Edward A. Charron, Jacksonville, Florida, Barnard Portman, Stanley Karsman, and Connerat, Dunn, Hunter, Houlihan, MacLean & Exley, Savannah, Georgia, and James L. Highsaw, Jr., Washington, D. C., for Defendants.

Order

LAWRENCE, D. J.: The above matter having come before the Court on motion of Seaboard Coast Line Railroad Company (SCL) for expansion of the class represented by plaintiff to all Negro employees of defendant Sea-

board Coast Line Railroad Company, represented by defendant Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees (BRAC), and formerly members of BRAC's Group 2 or 3 with SCL or its predecessor lines, and briefs and arguments of counsel having been received, it is

Ordered that the matter is under consideration of this Court but may require that this Court confer with Chief Judge Eugene A. Gordon and Judge Hiram H. Ward of the Middle District of North Carolina, in whose court are pending *Doctor* v. *SCL* [6 EPD ¶ 8877] and *King* v. *SCL* and with Judge Robert R. Merhige, Jr. of the Eastern District of Virginia in which *Coleman* v. *SCL* is situated.

APPENDIX 15

[¶ 9121] William English, Jr., Plaintiff v. Seaboard Coast Line Railroad Company et al., Defendants.

United States District Court, Southern District of Georgia, Waycross Division. No. 691. January 31, 1974.

Title VII—Civil Rights Act of 1964
Civil Rights Act of 1866

Racial Discrimination—Railroads—Seniority Systems—Agreement—Modification.—A labor agreement was modified to remedy a racially biased seniority system by allowing carryover seniority for transferring employees and by giving seniority preference to certain groups of transferees. "Fall-back" rights allowed employees not completing transfers to retain seniority. 42 U.S.C. Secs. 1981 and 2000e.

Back reference.—¶ 2670.

Amending (DC Ga. 1973) 6 EPD ¶ 8970, which was adopted after ruling in (DC Ga. 1972) 5 EPD ¶ 8018, remedial agreement in (DC Ga. 1972) 4 EPD ¶ 7461, which was affirmed as modified in (CA-5 1972) 4 EPD ¶ 7931, after stay in (DC Ga. 1971) 4 EPD ¶ 7505, of order in (DC Ga. 1971) 3 EPD ¶ 8316.

Fletcher Farrington, Savannah, Georgia, and Morris J. Baller, NAACP Legal Defense and Educational Fund, Inc., New York, New York, for Plaintiff.

Stanley M. Karsman, Savannah, Georgia, and James L. Highsaw, Washington, D.C., for Defendant Locals 5 and 1586, Brotherhood of Railway Steamship Clerks.

Edward A. Charron, General Counsel, and Malcolm Maclean, Savannah, Georgia, for Defendant Seaboard Coast Line Railroad Company.

Barnard M. Portman, Savannah, Georgia, for Intervenors.

Order

LAWRENCE, D. J.: An agreement dated January 12, 1973, merging BRAC Groups 1 and 2 over the entire SCL system, effective March 1, 1973, was adopted by Order of this Court on the 16th day of November, 1973.

The memorandum of agreement referred to above is hereby amended pursuant to the terms of a memorandum of agreement between SCL and BRAC dated January 30, 1974, attached hereto and incorporated by reference herein. Said agreements as amended are hereby adopted by this Court and made a part of this Order. The parties hereto, their officers, agents, employees, servants and all other persons and organizations in active concert or participation with them, are hereby permanently enjoined and restrained from engaging in any employment practice or course of conduct which interferes with or is contrary to this Order.

MEMORANDUM AGREEMENT

Between the

SEABOARD COAST LINE RAILROAD COMPANY

and

All that Craft or Class of Clerical,
Office, Station and Storehouse Employees
Represented by the

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

Rule 13 of the current Clerks' working agreement, effective January 1, 1968, is changed, modified and amended to read as follows:

(A) Employees making application for positions bulletined on other seniority districts will, if they possess sufficient fitness and ability, be given preference on a seniority basis over non-employees or employees not covered by these rules to any vacancy not filed by an employee holding seniority in the district where the vacancy occurs.

(B) Employees transferring under this rule will carry with them all seniority to the new seniority district and their name and date will be dovetailed onto the roster. Seniority established in the former seniority district will be forfeited and the employee's name removed from the former seniority district roster.

(C) Employees desiring to transfer under this rule will do so in writing to the Carrier official responsible for the assignment of employees in the seniority district to which a transfer is desired, with a copy to the employee's immediate supervisor and to the officer issuing the seniority roster on which the employee's name appears. A brief resume of the service record must be prepared by the employee and accompany the request, such resume to be prepared on form supplied by the Carrier, copy of which is attached and made a part of this agreement. An employee will be permitted to make a request for a specific vacancy, at a specific location, or a request general in nature for any vacancy that may occur in the seniority district to which transfer is desired. Those employees filing an application for transfer prior to time a vacancy is bulletined shall be given preference over those who file for a transfer during or after tne vacancy is bulletined. Where an employee has made a specific or general request for a vacancy, such request will expire on the following December 31st, or upon the employee's failure to accept a position as the senior qualified applicant. Written notification must be extended to the applicant within five (5) calendar days

of the close of the bulletin period, and acceptance or rejection shall be signified in writing, within five (5) calendar days from the date of notification. An employee whose request for transfer has expired may renew same at any time.

(D) The provisions of Rule 12 of the current working agreement shall be applicable to an employee transferring from one seniority district to another. However, where an employee is disqualified on the position to which transferred in the new seniority district, fall-back rights are contemplated and such employee may elect to have seniority restored on former district roster by filing notice of such election in writing with Carrier official issuing the seniority roster, with copy to the General Chairman, within five (5) calendar days from the date of disqualification. If such an election is not filed within said period, the employee shall retain seniority on the district to which transferred.

(E) All employees who transferred from one seniority district to another prior to the effective date of this amendment shall not have disturbed their seniority as now held; however, any employee desiring to have the earliest district seniority transferred to the district where currently employed may elect to do so by filing such election in writing, within thirty (30) calendar days from the effective date of this agreement, with Carrier officials issuing the involved seniority rosters, with copy to the General Chairman. An employee not making such election will use seniority as shown on roster where currently employed for bidding, displacement and transfer purposes, except where an employee is returning from an elective district to the employee's former district, whereupon seniority in the elective district will be forfeited.

(F) An employee who fails for any reason to utilize the provisions of Paragraph (E) hereof within the time specified therein, because of absence due to being on vacation, leave of absence, furloughed or occupying excepted or official position, shall be permitted to exercise the option set forth in (E) above, within the thirty (30) calendar day period immediately following return to service on a position under the provisions of this agreement.

(G) No employee shall, in the operation of this agreement, be entitled to displace other employees; however, they shall thereafter be entitled to place themselves in accordance with the provisions of the current working agreement.

(H) Any employee who prior to this agreement was not required to change seniority districts or residence to maintain protective benefits will not be required to do so by operation of this agreement.

(I) Revised seniority rosters necessitated by the application of this amendment shall be issued as soon as possible after the expiration of the thirty (30) calendar day period provided in Paragraph (E) hereof and, if issued prior to July 1, 1974, shall be regarded as meeting the requirements of Paragraph 5(a) of the current working agreement, except that such rosters shall be open to protest for a period of 120 calendar days from the date of posting. If no protest is registered within that period, the date shown shall be regarded as correct and not subject to further protest.

(J) A copy of this agreement shall be posted on all bulletin boards and placed in bulletin books at all locations where bulletins for clerical positions are ordinarily and customarily displayed for a period of not less than sixty (60) calendar days from the effective date of this agreement.

(K) All agreements, amendments, supplements, or interpretations in conflict with the provisions of this Memorandum Agreement are hereby cancelled insofar as the conflicting portions are concerned.

The changes in the existing collective bargaining agreement set forth above shall become effective March 1, 1974, or ten (10) calendar days from the date (whichever comes later) the Honorable Judge Lawrence approves this modification in the seniority system.

APPENDIX 16

[¶ 9248] Lorenzo Hayes et al., Plaintiffs v. Seaboard Coast Line Railroad Company et al., Defendants.

United States District Court, Southern District of Georgia, Savannah Division. No. 2371. March 22, 1974.

Title VII—Civil Rights Act of 1964

Racial Discrimination—Railroad Industry—Court Action.—A racial discrimination suit filed against a railroad company was consolidated with a related court action under which questions of seniority and employment status of certain employees were to be decided. 42 U.S.C. 2000e.

Back reference.—¶ 2510.15.

Issuing order directing consolidation with *English* v. *Seaboard Coast Line Railroad Co.* (DC Ga. 1971) 3 FPD ¶ 8316.

Order

LAWRENCE, C. J.: The above action having come before the Court upon motions of Seaboard Coast Line Railroad Company, and briefs and arguments of counsel having been received and considered, it is

Ordered, that this action be and hereby is consolidated with the pending action in the Waycross Division of this Court styled as "*William English, Jr.* v. *Seaboard Coast Line Railroad Company, et al.*, Civil Action No. 691," for trial in the second stage of that case; and it is

Further Ordered that, as this Court has previously ruled, all allegations with respect to the seniority or employment status of former Savannah Union Station Company employees shall be dealt with at such trial.

APPENDIX 17

[¶ 9553] Lorenzo Hayes et al., Plaintiffs v. Seaboard Coast Line Railroad Company et al., Defendants.

United States District Court, Southern District of Georgia, Savannah Division. No. 2371. July 1, 1974.

Title VII—Civil Rights Act of 1964

Racial Discrimination—Railroad Industry—Seniority Transfer—Settlement Agreement.—A settlement agreement was to be implemented resolving the issue of seniority transfer between a railroad and its predecessor as raised in a court action for racial discrimination. 42 U.S.C. Sec. 2000e.

Back reference.—¶ 1376.

Approving settlement in (DC Ga. 1968) 1 EPD ¶ 9936, and supplemental decision in (DC Ga. 1969) 1 EPD ¶ 9953, 46 F.R.D. 49, after denial of motion to dismiss (D.C. Ga. 1971) 3 EPD ¶ 8170, and denial of leave to appeal in (CA-5 1971) 3 EPD ¶ 8320, and issuance of rulings in (DC Ga. 1973) 6 EPD ¶ 8971, (DC Ga. 1973) 6 EPD ¶ 9032, and (DC Ga. 1974) 7 EPD ¶ 9248.

Fletcher Farrington, for Plaintiffs.

Hunter, Houlihan, Maclean, Exley, Dunn & Connerat, and W. Donlon, for Defendants.

Order

LAWRENCE, Ch.J.: The above matter having come before the Court upon stipulation of the parties for entry of the attached agreement, it is

ORDERED, that the attached agreement and stipulation is made an order of this Court, and the parties hereto, their agents, employees, and persons acting in concert

with them, are hereby enjoined from interfering with or disregarding the provisions thereof.

Stipulation

The parties to this action hereby stipulate and agree as follows:

That, in consideration of the agreement between Defendants Seaboard Coast Line Railroad Company and Brotherhood of Railway, Airline and Steamship Clerks attached hereto as Exhibit "A" and made a part hereof, plaintiffs expressly agree to waive, abandon and forego any claim of racial discrimination, including any claim for monetary compensation, because the seniority of former employees of Savannah Union Station Company was not transferred to Defendant SCL's predecessor lines upon the hiring of those employees by SCL's predecessor lines, i.e. the SAL and the ACL.

Exhibit "A"

MEMORANDUM AGREEMENT

BETWEEN

SEABOARD COAST LINE RAILROAD COMPANY AND ITS EMPLOYEES REPRESENTED BY BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS

The parties signatory hereto having conferred and reached an understanding this date to place former Savannah Union Station employees on Seaboard Coast Line Railroad Company's seniority roster as of dates held on former Savannah Union Station seniority rosters,

It Is Hereby Agreed That:

1. Employees whose names, along with their current SCL and former SUS seniority dates, appear hereinbelow are the employees covered by this agreement.

Name	SCL Seniority Date	SUS Seniority Date
Group I		
A. S. Hubert *	4-01-62	12-08-39
V. Burke (Rogers) **	4-04-62	10-12-42
R. F. Clark	4-04-62	3-08-43
P. M. Rowell x	4-05-62	1-17-44
J. B. Anderson **	4-06-62	5-06-44
C. E. DeLoach	4-07-62	10-25-45
R. B. Saturday (Bridges) **	4-07-62	8-12-56
A. L. Smith *	4-08-62	9-26-56
Group II		
J. E. Rickenbacker **	6-02-62	7-02-29
A. Williams **	6-03-62	4-20-35
W. L. Stringer	6-05-62	8-09-42
L. H. Stevens **	6-04-62	7-04-43
R. West **	6-08-62	10-11-45
R. Williams	6-08-62	5-03-50
W. Campbell x	6-06-62	12-11-45
F. Moore **	6-09-62	10-18-48
E. Maloy x	6-07-62	9-01-49
W. R. Butler	6-10-62	9-01-49
F. Wilson	6-11-62	11-14-49
Telegraphers		
W. M. Saturday #	4-06-62	10-19-42
B. V. Burnside	4-07-62	6-21-44
H. L. Wallace x	4-08-62	6-20-45

* Occupying non-contract position
** Leave of Absence—AMTRAK
x Disability Annuity
Occupying Train Dispatcher position

2. Effective immediately, employees named above will have their original SUS seniority dates, as indicated above, and their names will hereafter appear on their respective Savannah Division seniority rosters in the order of their SUS seniority.

3. No employee shall, in the operation of this agreement, be entitled to displace other employees; however they shall hereafter be entitled to place themselves in accordance with the provisions of the current working agreement.

4. Recognizing that the initial issuance of rosters pursuant to this agreement may result in dispute about established seniority rosters, it shall be open to protest for a period of 90 days from the date of posting. If no protest is registered within that period, the dates shown shall be regarded as correct and not subject to further protest.

5. This agreement is made to dispose of, or in contemplation of the disposal of certain pending litigation, and will not establish a precedent, and will not be referred to by either party in the handling of any other matter, seniority entitlement, or otherwise which is not directly related to this specific transaction.

APPENDIX 18

CIVIL DOCKET

UNITED STATES DISTRICT COURT

No. 2371

LORENZO HAYES, SMITH B. HAMILTON, GODFREY M. DAVIS, WILLIE CAMPBELL, LEE H. STEPHENS, individually and on behalf of others similarly situated

Vs.

SEABOARD AIR LINE RAILROAD COMPANY, a corporation; ATLANTIC COAST LINE RAILROAD COMPANY, a corporation; BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS AND STATION EMPLOYEES, an unincorporated association; LOCAL LODGE NO. 1338, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, an unincorporated association; LOCAL LODGE NO. 1587, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, an unincorporated association.

DATE	PROCEEDINGS
1968	
July 31	Filing original Complaint seeking permanent injunctive action. J. S. 5 card prepared.
July 31	Preparing copies and issuing Summons for service.
Aug. 6	Filing Marshal's Return of Service.
Aug. 20	Filing and entering Order granting all Defendants an additional fifteen days to file pleadings.
Sept. 3	Filing defendants Answer, with certificate of Service.
Sept. 3	Filing Defendant Interrogatories with Certificate of Service.

DATE	PROCEEDINGS
1968	
Sept. 3	Filing Defendants Motion to Strike, Motion to Stay Action, and to Dismiss a complaint with a Certificate of Service.
Sept. 6	Filing Answer of defendants other than Seaboard Air Line Railroad Co. and Atlantic Coast Line Railroad Company with certificate of service thereon.
Oct. 10	Motion to Substitute Proper Party-Defendant and to Amend Complaint.
Oct. 10	Motion to Strike Demand for Jury Trial.
Oct. 10	Memorandum in Support of Motion to Strike Demand for Jury Trial.
Oct. 21	Interrogatories of Defendants other than Seaboard Air Line Railroad Company and Atlantic Coast Line Railroad Company.
Nov. 7	Filing Affidavit by Defendant, Seaboard Air Line Railroad Co.'s Director of Labor relations's affidavit in support of motion to Dismiss or stay the case because of lack of efforts by the Equal Employment Opportunity Commission to conciliate, with certificate of service attached.
Nov. 18	Filing Plaintiffs' First Interrogatories to Defendant, Seaboard Coast Line RR. Co., with certificate of Service upon opposing counsel.
Nov. 18	Filing Plaintiffs' Response to Defendant's Motion to Dismiss., with certificate of service.
Nov. 18	Filing Plaintiffs' Motion for an order of Court for an order staying the filing of answers to interrogatories hereto served by Seaboard Coast Line Railroad Company, with certificate of service.
Nov. 19	Filing Seaboard Coast Line Railroad Company's Objections to Plaintiff's Motion in regard to Interrogatories with certificate of service thereon.

DATE	PROCEEDINGS
1968	
Nov. 22	Filing Defendant's Affidavit in support of motion to strike with certificate of service.
Dec. 2	Filing Plaintiffs' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS. Copy of Mem. given to Law Clerk.
Dec. 9	Filing Opinion and Order of Court allowing Motion to Strike Defendant's Demand for a Jury Trial on Issue of back pay, Motion of SCL yo Strike Allegation in Par. VIII of the Complaint and Motion to substitute Seaboard Coast Line RR. Co. for the Two Railroad Defendants who have merged.
Dec. 19	Filing Motion to Alter or amend the Order of 12/9/68 or in the alternative to certify question for purpose of an interlocutory Appeal. Copy to Law Clerk.
Dec. 19	Filing Memorandum in support of motion to alter or amend.
1969	
Jan. 6	Filing Defendant's objections to Plaintiffs' Motion to amend the order of 12/9/68 or to certify question for appeal; Defendant's Motion to Certify Denial of Jury trial for purpose of interlocutory appeal. Copy served on Law Clerk.
Jan. 14	Filing Supplemental Order of this Court ruling on various Motions. Notice of filing and copy of the order served on Counsel for all parties.
Jan. 15	Filing Defendant Railroad's Motion to Limit back pay claims to Class Members who filed EEDC grievances.

DATE	PROCEEDINGS
1969	
Jan. 17	Filing Order of Court ordering that Notice of Class Action be given pursuant to Rule 23c(2) R.R.C.P. with exhibits attached. Copy of order and Notice of filing served on Counsel for all parties.
April 1	Filing Certificate of Service by Mr. Malcolm Maclean, Attorney for Defendants in accordance with the Court's Order of February 14, 1969 that a copy of the Notice of Pendency of Action and Request for Exclusion to each of the persons named in the aforesaid Order of Court.
Sept. 22	Filing Plaintiffs' Answers to Interrogatories Propounded by Defendant Seaboard Coast Line Railroad Company, with certificate of service thereon.
Sept. 22	Filing Plaintiffs' Answer to Interrogatories Propounded by Defendant, Brotherhood of Railway and Steamship Clerks, Freight Handlers Express and Station Employees with certificate of service thereon.
1970	
April 17	Filing Amendment to Answer of Defendant Seaboard Coast Line Railroad Company, with order of Court allowing the amendment filed subject to objections and with certificate of service.
April 17	Filing Defendant's Second Interrogatories propounded to Plaintiff, with certificate of service.
April 20	Filing answer of defendant Seaboard Coast Line Railroad Co. to Interrogatories served by Plaintiffs with verification and certificate of service attached thereto.
June 2	Filing Answer of Defendant Seaboard Coast Line Railroad Co. to Interrogatory 1(b) served by Plaintiff, with certificate of service.

DATE	PROCEEDINGS
1970	
Aug. 25	Filing Defendant's First Amendment to Answer to First Interrogatories served by Plaintiff on Defendant, by adding two sentences to Interrogatory No. 13 and No. 14, with certificate of service.
Oct. 15	Filing Motion of SEABOARD COAST LINE RAILROAD COMPANY to Dismiss for Failure of Plaintiff to join indispensible parties with certificate of service.
Oct. 15	Filing SEABOARD COAST LINE RAILROAD COMPANY's Request for Admissions of Facts with certificate of service attached thereto.
Oct. 27	Filing Defendant's First Amendment to Request for Admission of Facts. With Certificate of Service thereon.
1971	
Feb. 1	Filing Defendant, Seaboard Coast Line Railroad Co's Second Motion to Dismiss for failure to join indispensable parties. Copy to Law Clerk.
Feb. 16	Filing to take deposition of James E. Wolfe at 10:00 A.M. on the 25th day of March at his home at 226 Holmes Avenue, Clarendon Hills, Ill. The deposition will be taken by the Defendant, with certificate of service.
Feb. 23	Filing Plaintiff's Memorandum in Opposition to Motion to Dismiss for Failure to Join Indispensable Parties with Certificate of Service.
Feb. 25	Filing Defendant's Motion for Summary Judgment. Entered on Motion docket and delivered copy to Law Clerk.
March 18	Filing Defendant's Memorandum in opposition to Motion for Summary Judgment. Copy delivered to the Law Clerk.
March 22	Filing Plaintiff's Requests for admissions.

DATE	PROCEEDINGS
1971	
March 25	Filing Memorandum in opposition to Second Motion to Dismiss for Failure to join indispensable parties. Copy to the Law Clerk.
April 8	Filing Defendant's Requests for Admission of Documents, with Notice to Plaintiff's Attorney.
April 9	Filing and entering Order of Court overruling Defendant's Motion to Dismiss for failure to join indispensable parties and suggesting that the action be stayed until such time as the Plaintiffs file an amendment naming as one of the respondents one or more of the white employees included in this action. The Court overrules this motion without prejudicing the Defendant Railroad's right to present such facts at the trial of the case. Copy of order mailed to Counsel for Plaintiff and to Counsel for the Brotherhood of Railway & Steamship Clerks & Etc.
April 20	Filing and entering Motion to alter or amend the order of April 9, 1971 or in the alternative to certify the question for purpose of an interlocutory appeal, with certificate of Service attached thereto.
April 23	Filing Answers to Plaintiffs' request for Admissions, with cert. of service.
April 29	Filing Defendant's Notice to Take Testimony of Willie Campbell, Uley Hamilton and Lee H. Stephens, before Mrs. Gloria Kitchings, N.P., at 10:00 A.M., May 19, 1971, at 1004 Savannah Bank Bldg., Savannah, Ga., with certificate of service.
April 29	Filing Defendant's Notice to Take Testimony of Lorenzo Hayes, Smith B. Hamilton and Godfrey M. Davis before Mrs. Gloria Kitchings, N.P., on May 18, 1971, at 10:00 A.M., at 1004 Savannah

DATE	PROCEEDINGS
1971	
	Bank Bldg., Savannah, Ga., with certificate of service.
May 28	Filing Motion of Seaboard Coast Line Railroad Company to require Plaintiffs to Answer Interrogatories. Copy delivered to the Law Clerk.
June 7	Filing Sealed *Deposition* of *Lorenzo Hayes* taken on the 18th day of May, 1971 by Defendants.
June 7	Filing Sealed *Deposition* of *Godfrey M. Davis*, taken by Defendants, on the 18th day of May, 1971.
June 7	Filing Sealed *Deposition*, taken by Defendants, on the 18th day of May, 1971 of *Smith B. Hamilton*.
June 29	Filing and entering Motion to Plaintiff to determine sufficiency of defendant's objections to Plaintiff's requests for admissions, compel answers, and award expenses of motion, with Certificate of Service.
July 2	Filing and entering order of this Court ordering that Plaintiff's Motion to Alter or amend, is denied, except insofar as it requests that the question requiring white clerks to be joined as party defendants in this action be joined as party defendants under Title VIII, 42 USC, Section 2000e, et. seq. be certified for interlocutory appeal; order further certifying that the above question shall be presented to the United States Court of Appeals for the Fifth Circuit, Notice of filing and copy of order mailed to all counsel this date.
July 12	Filing Defendant Seaboard Coast Line Railroad Company's Motion for Partial Summary Judgment, with certificate of service thereon.
July 16	Filing Plaintiff's Request for Production of Documents, with certificate of service thereon.

DATE	PROCEEDINGS
1971	
July 29	Filing Defendant Seaboard Coast Line RR. Co.'s Reservation of Rights to Respond or object to Plaintiffs' request for Production of Documents, with cert. of service. Copy to Law Clerk.
Aug. 24	Filing true copy of order issued by the United States Court of Appeals for the Fifth Circuit denying Plaintiff's leave to appeal from the interlocutory order of the District Court, Southern District of Georgia on July 2, 1971 for want of jurisdiction.
Oct. 21	Filing Plaintiff's Memorandum in opposition to Seaboard's Motion for partial Summary Judgment.
1972	
Feb. 28	Filing Notice of Defendant to take the testimony of Willie Campbell on March 28, 1972 with Notice to Plaintiff's Attorney. Issued deposition subpoena.
April 4	Filing sealed *Deposition* of *Willie Campbell*, taken on March 28th, 1972 taken by the defendants.
April 26	Filing Seaboard Coast Line Railroad Company's Second Amendment to its Answer, with certificate of service thereon.
April 26	Filing Defendant's Fourth Motion stating that they (Seaboard Coast Line RR.) move the court for an order limiting all back pay sought under Title VII of the Civil Rights Acts of 1964, with certificate of service thereon. (Or in the alternative, for an order limiting such back pay to July 1, 1965.)
May 3	Filing Defendant's Second Request for Admission of Documents, with Notice of filing and certificate of service.
May 3	Filing Defendant's Fifth Motions—1. To issue an order making the United Transport Service Employees, AFL-CIO a party Defendant, with proposed order, to direct issuance of process and

DATE	PROCEEDINGS
1972	
	served upon Defendant and 3. Requiring Plaintiff to serve and file an amended complaint to this effect, with certificate of service and affidavit of Charles Edwards.
May 9	Filing Seaboard Coast Line Railroad Company's Motion to Dismiss Lorenzo Hayes as a party Plaintiff and to Dismiss Willie Campbell as party Plaintiff, with certificate of service. Entered on Motion docket and Attorney furnished the Law Clerk with a copy of the Motions.
June 15	Filing Defendant's Objections to Plaintiff's Request for Production of documents.
June 16	Filing Plaintiff's Response to Defendant's Fourth, Fifth, Sixth Motions.
1973	
Feb. 1	Filing Motion of Seaboard Coast Line Railroad Company to amend its answer, with attached Order of Court allowing motion, subject to objections. Notice of filing and copy of Order served on Counsel.
Nov. 8	Filing Plaintiff's Motion in the alternative for reassignment of case to a Circuit or a District Judge for hearing.
Nov. 8	Pre-trial hearing called this date. Attorneys for parties present. Discussion on each side's position made to the Court. Mr. Farrington Attorney for the Plaintiff presented the above motion for reassignment of this case to another Judge, Court stated that he will sign order for appointment of another Judge, Hearing in recess.

DATE	PROCEEDINGS
1973	
Nov. 9	Filing Seaboard Coast Line Railroad Co.'s Response in opposition to Plaintiffs' Motion in the Alternative for Reassignment of case.
Nov. 9	Filing Coast Line Railroad's Company's Memorandum in opposition to Motion for Reassignment.
Nov. 16	Filing Notice of and Motion for Plaintiff for Preliminary Injunction, with memorandum Agreement between Seaboard Coast Line Railroad Co. and its employees represented by Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and certificate of service.
Nov. 16	Filing Plaintiffs' Motion to join Defendant United States Transportation Union as a Defendant, with copy of First amended Complaint, with certificate of service.
Nov. 16	Filing Interim Order, Plaintiffs having moved to add party Defendant, the United Transportation Union and setting hearing on all of the motions filed this date to be held at 10:00 A.M. in the United States Courthouse, Savannah, Georgia on December 12, 1973. (Plaintiff's Attorney to serve copy of motions and order setting hearing).
Nov. 19	Notice of hearing set for December 12 next mailed to all Counsel of record with order setting the hearing.
Nov. 19	Filing and entering Order of Court on motions; that Order of 4-9-71 is accordingly vacated, SCL's motion for limitation of back pay are reserved for decision at or following trial; SCL's fifth motion is dismissed as moot; SCL's sixth motions are denied; SCL's motion for partial summary judgment is denied; and SCL's motion to compel answer to

DATE	PROCEEDINGS
1973	
	its second interrogatories is granted, but costs and attorneys fees are denied. Plaintiffs are ordered to respond fully to said interrogatories within thirty days of the date of this order, all objections thereto having been waived. Notice of filing and copy of Order served on counsel.
Nov. 20	Filing SCL's Eighth Motions—to dismiss all claims, to stay this action, to grant SCL its attorneys' fees, costs and expenses, with certificate of service.
Nov. 20	Filing Brief in support of SCL's eighth Motions, with certificate of service.
Nov. 20	Filing Interrogatories to Members of the Class represented by Lorenzo Hayes, et. al. with certificate of service.
Nov. 26	Filing Response of Defendants Brotherhood of Railway and Airline Clerks, et. al. to motion of the Plaintiffs to join the United Transportation Union as a party defendant, with certificate of service.
Nov. 26	Filing Response to Defendants Brotherhood of Railway and Airline Clerks, et. al. in opposition to Plaintiffs' Motion in the alternative for reassignment of case, with certificate of service attached.
Nov. 28	Filing Response of Defendants Brotherhood of Railway and Airline Clerks, et al in opposition to Motion of Plaintiffs for a preliminary injunction with exhibit order attached.
Dec. 5	Filing Response of Defendants Brotherhood of Railway and Airline Clerks, et. al., in support of Def. SCL RR Company's Eighth Motions, with certificate of service attached.

DATE	PROCEEDINGS
1973	
Dec. 12	Hearing on all matters still pending and filed after pre-trial hearing held 11-8-73. Attorneys present and presented arguments. Trial set for April 15th, 1974, Monday at 10:00 A.M.
Dec. 13	Filing Order of Court on Plaintiffs Motion to join the United Transportation Union as a party Defendant and for leave to file an amended complaint attached to the motion. Motion is denied; further ordering that Plaintiffs' Motion to compel answers to their requests for admission of facts is granted and Seaboard Coast Line Railroad Co. is ordered to respond to said requests on or before January 1, 1974. Copy mailed to all Counsel for the parties.
Dec. 21	Filing Second Answers to Plaintiffs' Requests for Admission of Facts, certificate of service.
1974	
March 18	Filing Seaboard Coast Line Railroad Company's Ninth Motions, to consolidate this action with Waycross #691 and for an Order granting SCL's motion for partial summary judgment, with *RULE NISI* attached ordering that plaintiffs show cause before this Court on *March 22nd, 1974, at 3:30 P.M.* why said motions should not be granted, with certificate of service attached.
March 22	Filing Order of Court on motions of Seaboard Coast Line Railroad Company and briefs and arguments of Counsel ordering that this action be and is hereby consolidated with pending action in the Waycross Division of this Court styled as "William English, Jr. v. Seaboard Coast Line Railroad Company, et al action No. 691 for trial in the second stage of that case and further ordering all allegations with respect to the seniority or employment status of former Savannah Union Station

DATE	PROCEEDINGS
1973	
	Company Employees shall be dealt with at such trial. [Copy of order mailed to all Counsel of Record in this case and in the Waycross C/A 691].
May 30	Filing SCL RR Company's response to Plaintiff's Amendment to this proposed Order and Plaintiff's proposed conclusions of Law attached, with certificate of service.
July 1	Filing Stipulation and agreement between Defendants, Seaboard Coast Line RR. Co. and Brotherhood of Railway, Airline and Steamship Clerks to waive, abandon and forego any claim of racial discrimination, including any claim for monetary compensation, because the seniority of former employees of Savannah Union Station Company was not transferred to Defendant SCL's predecessor lines upon the hiring of those employees by SCL's predecessor lines, i.e. the SAL and ACL., with list of employees covered by agreement, with order of Court ordering the parties hereto, their agents, employees, and persons acting in concert are hereby enjoined from interfering with or disregarding the provisions thereof. (Copy of order mailed to Counsel)
July 16	Filing Seaboard Coast Line Railroad Company's Renewal of Motion to compel answers to interrogatories, with certificate of service.
July 16	Filing and entering Order of Court that deft's motion to compel answers to interrogatories is allowed and plaintiff is ordered to answer said interrogatories fully, in writing, under oath, on or before August 31, 1974. Notice of filing and copy of Order served on all parties.

DATE	PROCEEDINGS
1974	
July 18	Filing Seaboard Coastline Railroad Co's Motion to Compel Answers to interrogatories, with certificate of Service.
July 18	Filing and entering Order of Court that each individual member of the class represented by plaintiffs answer said interrogatories fully, in writing, under oath, on or before August 31, 1974. Notice of filing and copy of Order served on all parties.
Aug. 28	Filing Motion of Plaintiffs to reconsider and vacate orders of July 16 and July 18, 1974., with certificate of service.
Sept. 4	Filing *Rule Nisi* ordering that plaintiffs show cause before this Court on Tuesday, the 1st day of October, 1974 at 2:00 PM why motion of Seaboard Coastline RR Co.'s Motion for Sanctions and response to Motion for reconsideration, *FILED THIS DATE*, should not be granted. Copy of Rule Nisi and notice of filing served on counsel.
Oct. 1	Hearing held this date on pending Motions called this date. Attorneys present. Both sides presented arguments to the Court. Court will not compel answers at this time, should be reserved for second stage. All other motions held until Court completes opinion in the English case, Waycross C/A 691.

APPENDIX 19

CIVIL DOCKET

UNITED STATES DISTRICT COURT

No. CV474-69

ULEY HAMILTON AND GODFREY M. DAVIS

vs.

SEABOARD COAST LINE RAILROAD COMPANY, a corporation; UNITED TRANSPORTATION UNION, an unincorporated association; LOCAL LODGE NUMBER 1031, UNITED TRANSPORTATION UNION, an unincorporated association.

Suit brought in equity authorized and instituted against defendant SCL pursuant to Title VII of the Act of Congress known as "The Civil Rights Act of 1964", 42 U.S.C. §§ 2000e, *et seq.* and for declaratory judgment as to rights established under legislation. Also pursuant to 42 U.S.C. § 1981

DATE	PROCEEDINGS
1974	
April 18	Filing Original Complaint, preparing copies, issuing summons and delivered to U.S. Marshal for service. *J. S. 5 Card Prepared*
April 30	Filing Answer of SCL RR Co., with exhibits attached and certificate of service thereon.
April 30	Filing Defts. SCL RR Co., Motions to Dismiss, For an Order of Court pursuant to Rule 23, For an Order of Court requiring notice to be given to all members of the alleged class, an Order requiring pltfs to describe in detail the members of the class, For trial by jury, and to Strike, with certificate of service thereon.

DATE	PROCEEDINGS
1974	
April 30	Filing SCL RR Co.'s Brief in support of motions, with certificate of service attached.
May 6	Filing Motion of Defts, United Transportation Union and Local Lodge #1031, United Transportation Union for an order enlarging the time in which to file defensive pleadings, consented to by plaintiff's attorney, with *ORDER OF COURT* attached allowing motion and ordering that defts have until June 1, 1974 to serve and file their defensive pleadings.
May 6	Filing Plaintiffs motion to Amend complaint with proposed order attached, with certificate of service thereon.
May 6	Filing and entering Order of Court granting motion of pltf to amend Complaint. Notice of filing and copy of Order served on all counsel.
May 16	Filing U.S. Marshal's return on service of Complaint.
May 17	Filing ANSWER of Defendants United Transportation Union and Local Lodge No. 1031, United Transportation Union, with certificate of service.
May 23	Filing Seaboard Coast Line Railroad Company's First Interrogatories to Plaintiff, Godfrey M. Davis with Notice and certificate of service.
June 27	Filing Plaintiff's Notice to take deposition of Defendant Corporation at 10:00 A.M., Monday July 8, 1974 at the offices of Plaintiff's Attorneys, Hill, Jones and Farrington, Savannah, Georgia.
July 5	Filing Plaintiff Godfrey's Answer to Defendant Seaboard Coast Line First Interrogatories.
July 5	Filing Plaintiff, Davis's Answers to Defendant Seaboard Coast Line First Interrogatories.
July 11	Filing Request for admission of documents by defts, SCL, with certificate of service.

DATE	PROCEEDINGS
1974	
July 15	Filing Plaintiffs First Interrogatories to Defendant & Certificate of service.
July 15	Plaintiff Godfrey Davis' First Supplemental Answers to Defendant Seaboard Coast Line's First Interrogatories & certificate of service.
July 15	Plaintiffs' Motion in the alternative for reassignment of case & certificate of service.
July 15	Filing Seaboard Coast Line Railroad Company's Second Motions, with certificate of service. (To Dismiss or in Alternative for Plaintiffs to decide whether they wish to proceed as pltfs in #2371.)
July 22	Filing Plaintiff's Response to Seaboard Coast Line's request for Admission of Documents.
Aug. 1	Filing and entering Seaboard Coastlines Railroad Co's Third Brief, with certificate of service.
Aug. 1 Not Recorded	Case called for hearing this date on pending motions. Arguments made by counsel for the parties. Court took under advisement. Another hearing—probable evidentiary—will be set at some later date.
Aug. 5	Filing Seaboard Coastline Railroad Company's Amendment to Motion to Dismiss, with certificate of service.
Aug. 9	Filing Seaboard Coast Line Railroad Company's answers to Plaintiffs' First Interrogatories, with certificate of service.
1975	
March 10	Filing Plaintiff's Motion to Amend Complaint to add Booker T. Snowden, Party-Plaintiff.
March 10	Hearing on re-arguments called this date. Attorneys present for the parties. Arguments presented to the Court; Plaintiff's Atty. filed his 2nd

DATE	PROCEEDINGS
1974	
	motion to amend the complaint. Defendant objected to the motion to amend. Issue in question is that blacks should be allowed to switch crafts and carry over seniority from last craft. Court overruled Defendant's Motion for Summary Judgment. Court will hold evidentiary hearing at 9:30 A.M. on May 5th, 1975 possibly two days.
March 10	Filing Defendant, Seaboard Coast Line RR Co.'s Objection to the attempted "Rule 20(a) Amendment of the complaint to join Booker T. Snowden as an intervening party Plaintiff.
March 13	Filing Third Motions of Seaboard Coast Line Railroad Co. to Dismiss.
March 13	Filing Defendant, Seaboard Coast Line Railroad Co.'s Answer to Plaintiffs' Second Motion to Amend Complaint.
March 28	Filing Deposition of Mr. B. T. Snowden, taken by defendants, at the offices of Hunter, Houlihan, Maclean, Exley, Dunn & Connerat, on March 20th, 1975 at 12:00 Noon.
April 10	Filing Objections of United Transportation Union, Defts, to the joinder of Booker T. Snowden as a party pltf or in the alternative Motion for Summary Judgment, with certificate of service.
April 15	Filing Brief of United Transportation Union, Defendants, in support of objections to addition of Booker T. Snowden as party plaintiff, with certificate of service.
April 15	Hearing on Motion objecting to intervention of Booker T. Snowden as a party plaintiff. Attorneys present, arguments presented to the court by both sides. Court sustains objection to intervention. Atty Farrington will prepare order transferring Snowden to Waycross Seniority Roster.

DATE	PROCEEDINGS
1975	
May 1	Filing Transcript of proceedings taken April 15, 1975 in Savannah, Ga. before the Hon. Alexander A. Lawrence, Chief Judge, U.S. District Court. (Pursuant to Order of May 2, this transcript mailed to Waycross Div.)
May 2	Filing and entering Order of Court that the clerk is instructed to send all records in the file connected with Booker T. Snowden's claim to the Waycross Division along with a copy of this Order, this includes Snowden's attempt at intervention, the objections filed by UTU and SCL, the motions and answer filed by SCL., the briefs filed by SCL and UTU, Snowden's deposition and a transcript of the hearing held before the court on the objections to Snowden's intervention. Notice of filing and copy of Order served on all counsel.
May 5	Pursuant to above order of court, pleadings, as set out in order, are hereby transferred to Waycross Division this date.
May 5 *Recorded*	Case called for non-jury trial before the Court this date on merits of the case this date. Opening statements made to the Court by both sides. Witnesses called, sworn and remained in the Courtroom. Plaintiffs' witnesses began testifying and introduced evidence to the Court at 10:20 A.M. and resumed at 2:00 P.M. after lunch. Plaintiff rested, Defendants' Witnesses began testifying and introducing evidence to the Court at 2:22 P.M. and concluded at 4:40 P.M.[Exhibits introduced into evidence: Plaintiffs—Three and Defendant—19] [Defendant's Exhibit No. 18 stored in vault because of bulk].

APPENDIX 20

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

SAVANNAH DIVISION

ENGLISH, ET AL.

vs.

SEABOARD COASTLINE RAILROAD

Proceedings before the Honorable Alexander A. Lawrence, U.S. District Judge, Southern District of Georgia, Savannah, Georgia, on April 15, 1975.

APPEARANCES:

For Seaboard Coastline Railroad
Malcolm Maclean
Savannah Bank Building
Savannah, Georgia

For English, et al.
Fletcher Farrington
208 East 34th Street
Savannah, Georgia

[3] THE COURT: Now, Mr. Maclean had another matter.

MR. MACLEAN: Well, Sir, you've pretty well discouraged me on it, but I'll be glad to bring it up again.

THE COURT: He's after me to . . .

MR. MACLEAN: I told Fletcher that I . . .

THE COURT: In a class action, include everybody up and down the line . . .

MR. MACLEAN: And the reason for that is, if Your Honor please. You know and Mr. Farrington knows that

the reason for that is that in the beginning, we though we were gonna have one case, and maybe two, in Georgia and it turns out we don't have it that way. We have 'em here, we've got 'em in the Middle District of North Carolina, in the Eastern District of Virginia and there was another one filed the other day in Jacksonville. And, it is our feeling—you have issued three orders, as I recall—Four orders that have to do with the whole class. You have—You've issued an order that put together groups one and two, and that wasn't just in here. That order is—is—is to do with the contract between the railroad and the union and they have put those two classes together. There is no longer groups one and two, and that's true from Miami to Birmingham, to Richmond. You've issued some more orders in connection with some people that Fletcher represents in Jacksonville that were put into the Hayes case because we wanted an order in this case—the Hayes and English case—Anyhow, an order in this Court that deals with what's goin' on in Jacksonville. We had another order about some [4] trainmen out here, or the terminal people at uh—the Savannah station. We have—Everything that—Every order that's connected with that contract that's been issued has been issued from this Court. It will be a . . .

THE COURT: Well, I . . .

MR. MACLEAN: . . . remarkable situation if we have a District Judge in—in one state or one division of this country issuing one set of orders about that contract, and different places issuing other orders. What we suggest is that if you take it and—then—the people in Virginia can either try the case down here, or they can just go ahead and try 'em in the Court in the Eastern District of Virginia, and the same thing holds true for Mr. Doctor in the Middle District of North Carolina. But if we have a—That case is on Appeal like that, and the BRAC—the BRAC people are presently dismissed. But that's—that question is appealed to the Fourth Circuit. But, if

the class is all in one place, we won't have this—the anomalous position of different Judges—I mean, you—as I understand from this great book—learned book—the bench warmers—everybody's ent—Every District Judge can say whatever they want about anything, subject to the correction by the Circuits. So, there's no reason why the three District Judges before whom this contract is can't come to different opinions about everything about it, which would leave the Union and the Railroad in a very odd fix. And, what we're tryin' to do is—You're quite right, because you [5] told me we should have thought of this to begin with. Well, we should have. That's true. But lackin', uh—We didn't know it was gonna end up like this, and it's like a lot of other things. Mr. Kissinger didn't know that his Middle East policy—his Far East policy was gonna fall to pieces. We just didn't foresee this. But now that it's upon us, we—it seems to us that the only rational way to administer justice in this, or to come to some kind of conclusion to this case is for some District Judge to—to say, "I'm going to be in charge of the contract." And, you have already assumed that position. And what we ask now is that you issue an order and say that that's where we are. And, if you don't want to do it, my other proposition is that you issue an order sayin', "I deny your order."

THE COURT: Well, what you're talkin' to me about this morning—was you foresaw, and perhaps correctly, that I wasn't going to extend class beyond the Savannah and the Waycross particular areas, that you wanted me to certify the question that . . .

MR. MACLEAN: Yes, Sir. My argument then . . . I—I didn't see any enthusiasm since I've been tryin' to sell this particular package. You didn't—haven't seemed to be taken much with the idea, so it occurred to me that then—the thing to do would be—We made a formal motion, and we'll be happy to prepare an order. Fletcher has gone up on a certified question in the English case,

and we'll try and go up on [6] the same issue this time. . . .

THE COURT: Well, I can't delay that case any longer and I'm tryin' to bring it to a head, and that's. . . .

MR. MACLEAN: Well Sir, I'll tell you somethin' else Mr. Farrington and—Mr. Farrington can correct me if I'm mistaken. It's my understanding from Mr. Farrington the other day,—he said once you decided, he'd join me in asking you to assume jurisdiction over the whole class . . .

THE COURT: All right, well—let—let that come when it does, and I hope that will be soon.

MR. MACLEAN: All right, Sir. Well, I just . . .

THE COURT: That's all I can do for the present.

MR. MACLEAN: All right. Well, I. . . . No, that's. . . .

THE COURT: Well, you can take this off the record.

CERTIFICATE

I certify that the foregoing six pages of typewritten testimony in this case were taken down by me and transcribed under my supervision and I further certify that it contains a true and correct transcript of testimony in the case English, et al. vs. Seaboard Coastline Railroad.

I certify that I am a disinterested party to this action and that I am not of kin or counsel to any of the parties hereto.

This ——— of ————————, 1975.

JAMES P. DELOACH, JR.
Official U. S. Court Reporter
Southern District of Georgia
Savannah, Georgia.